Federal Court  Cour fédérale

Date: 20230221

Docket: T-1089-22

Citation: 2023 FC 252

Toronto, Ontario, February 21, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

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

and

NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON, WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-EVÉ CARON, THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE, RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES, CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL

LEGENDRE, KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY, KIM MARTIN MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR, JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI, LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER, NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER, TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR, CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS, JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE (DEPARTMENT OF NATIONAL DEFENCE)

and

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

and

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

and

JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)

and

MELANIE DUFOUR, (BANK OF CANADA)

and

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

and

JANE DOE #9, (CANADA PENSION PLAN)

and

NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR, SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR, JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA, MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON, LEILA KOSTYK, DIANE C LABBÉ, MICHELLE LAMARRE, NICOLAS LEBLOND, SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE, PIERRE-ALEXANDRE RACINE,

BENJAMIN RUSSELL, ROBERT SNOWDEN, AABID THAWER, HEIDI WIENER, SVJETLANA ZELENBABA, NADIA ZINCK, AARON JAMES THOMAS SHORROCK, DEIRDRE MCINTOSH, (CANADA REVENUE AGENCY)

and

TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)

and

JASMIN BOURDON, (CANADA SPACE AGENCY)

and

SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON, (CANADIAN COAST GUARD)

and

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

and

ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)

and

CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)

and

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

and

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

and

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

and

OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)

and

ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)

and

KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)

and

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

and

JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)

and

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

and

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

and

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

and

DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)

and

TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU, CHANTA AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND, AMAUD BRIEN THIFFAULT, SHARON CHIU, MICHEL DAIGLE, BRIGITTE DANIELS, LOUISE GAUDREAULT, KARRIE GEVAERT, MARK GEVAERT, PETER IVERSEN, DERRIK LAMB , JANE DOE #19, ANNA MARINIC, DIVINE

MASABARAKIZA, JAMES MENDHAM, MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENECAL, JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN, LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS, LI YANG ZHU, PATRICE LEVER, (EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)

and

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

and

PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)

and

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

and

VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)

and

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

and

DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)

and

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

and

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

and

AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)

and

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

and

NATHALIE JOANNE GAUTHIER, (INDIGENOUS AND NORTHERN AFFAIRS CANADA)

and

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

and

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

and

GILES ROY, (NATIONAL FILM BOARD OF CANADA)

and

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

and

FELIX BEAUCHAMP, (NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)

and

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

and

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

and

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

and

RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)

and

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

and

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

and

CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)

and

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

and

FAY ANNE BARBER, (PUBLIC SAFETY CANADA)

and

DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)

and

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

and

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

and

JANE BARTMANOVICH, (ROYAL CANADIAN MINT)

and

NICOLE BRISSON, (SERVICE CANADA)

and

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

and

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

and

STEVE YOUNG, (TELESTAT CANADA)

and

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

and

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

and

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

and

OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN, JANE DOE #32, LAURA CRYSTAL BROWN, KE(JERRY) CAI, NICOLINO CAMPANELLI, DONALD KEITH CAMPBELL, COLLEEN CARDER, KATHY CARRIERE, MELISSA CARSON, DAVID CLARK, BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA, ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON, EUGENEDAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE, ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY, KRISTA IMIOLA,CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO, ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34, JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA, PAMELA OPERSKO, GABRIEL PAQUET CHRISTINE PAQUETTE, CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE, GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER, ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO, NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA

STROUD, ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM, ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE BURCH, STEVEN COLE, TONI DOWNIE, AMBER RICARD, JODI STAMMIS, (CANADA POST)

and

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

and

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

and

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

and

REJEAN NANTEL, (BANK OF MONTREAL)

and

LANCE VICTOR SCHIIKA, (BC COAST PILOTS LTD)

and

ELIZABETH GODLER, (BC FERRIES)

and

JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43, KARTER CUTHBERT FELDHOFF DE LA NUEZ, JEFFREY MICHAEL JOSEPH GOUDREAU, BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON, JOHN DOE #27, JANICE LARAINE KRISTMANSON, JANE DOE #44, DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29, MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33, JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH, JOHN DOE

#36, STEVE HEATLEY, (BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)

and

PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)

and

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

and

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

and

KARIN LUTZ, (DP WORLD)

and

CRYSTAL SMEENK, (FARM CREDIT CANADA)

and

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

and

SHAWN CORMAN, (GEOTECH AVIATION)

and

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

and

DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)

and

HANS-PETER LIECHTI, (NATIONAL ART CENTRE)

and

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

and

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

and

JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)

and

ANGELA GROSS, (PUROLATOR INC.)

and

GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)

and

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

and

JAMES (JED) FORSMAN, (RISE AIR)

and

JANE DOE #48, (ROGERS COMMUNICATIONS INC)

and

JERRILYNN REBEYKA, (SASKTEL)

and

EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)

and

JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)

and

DARIN WATSON, (SHAW)

and

RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)

and

DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)

and

KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)

and

SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)

and

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

and

MELVIN GEREIN, (WESTSHORE TERMINALS)

Plaintiffs

and

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

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendants have brought a motion pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules] to strike the Plaintiffs' Statement of Claim in its entirety, without leave to amend.

[2] The Statement of Claim was filed on May 30, 2022. The Plaintiffs comprise approximately 600 individuals who allege they suffered harm as a result of the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* issued by the Treasury Board of Canada on October 6, 2021 [TB Policy], and the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* issued by Transport Canada on April 24, 2022 [Interim Order].

[3] The Plaintiffs are current or former employees of the Government of Canada, federal Crown corporations, and federally-regulated businesses or organizations. The precise circumstances of the Plaintiffs' employment are not pleaded in the Statement of Claim.

[4] Unusually, the style of cause groups the Plaintiffs by their employers. For example, the first group of Plaintiffs is identified as employed by the Royal Canadian Mounted Police; the second as employed by the Department of National Defence; the third as employed by the Canada Border Services Agency; and so on.

[5] There are numerous groups of Plaintiffs identified as employees of a wide variety of federal government institutions and Crown corporations. Other Plaintiffs are identified as employees of federally-regulated businesses or organizations such as Air Canada, Bank of Montreal, BC Ferries, Canadian National Railway, Ontario Power Generation, Purolator, and Rogers Communications.

[6] According to the Defendants, approximately two-thirds of the Plaintiffs appear to be employed within the Core Public Administration [CPA], as defined in the *Financial Administration Act*, RSC 1985, c F-11, s 11(1) and Schedules I, IV [FAA]. The Defendants say these Plaintiffs' claims are barred by s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [FPSLRA].

[7] The remaining one-third of the Plaintiffs appear to fall within two other categories: employees of federal Crown corporations and employees of businesses or organizations that operate in a variety of federally-regulated sectors, principally transportation, telecommunications, logistics, finance, and courier services. The Defendants do not dispute the Court's potential jurisdiction over the claims brought by these Plaintiffs, but nevertheless maintain that the Statement of Claim fails to disclose any reasonable causes of action.

[8] With respect to those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend. With respect to those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend.

II. Issues

[9] The issues raised by the Defendants' motion are whether the Statement of Claim should be struck and, if so, whether leave should be granted to amend the pleading.

A. *Plaintiffs Subject to the FPSLRA*

[10] The Plaintiffs who are employed within the organizations listed in Schedule A hereto are members of the CPA, as defined in the FAA. Persons employed within the CPA are subject to s 236 of the FPSLRA. This provision reads as follows:

No Right of Action	**Absence de droit d'action**
Disputes relating to employment	**Différend lié à l'emploi**
236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.	**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.
Application	**Application**
(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.	**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.
[…]	[…]

[11] The right to grieve is available to employees as defined in s 206(1) of the FPSLRA. Both unionized and non-unionized employees may file a grievance. The Defendants say that the Plaintiffs' right to grieve encompasses the allegations contained in the Statement of Claim, because they concern their "terms and conditions of employment", as that expression is used in s 208 of the FPSLRA:

Right of employee	**Droit du fonctionnaire**
208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved (a) by the interpretation or application, in respect of the employee, of	**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé a) par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	b) par suite de tout fait portant atteinte à ses conditions d'emploi.

[12] In *Hudson v Canada*, 2022 FC 694 [*Hudson*], I granted the defendant's motion to strike the statement of claim without leave to amend on the ground that the plaintiffs' claims were barred by s 236 of the FPSLRA. The analysis that follows is adapted from the one I applied in *Hudson*.

[13] Subsection 236(1) of the FPSLRA has been recognized as an "explicit ouster" of the courts' jurisdiction (*Bron v Canada (Attorney General),* 2010 ONCA 71 [*Bron*] at para 4). Once it is established that a matter must be the subject of a grievance, the grievance process cannot be circumvented, even for reasons of efficiency, by relying on a court's residual jurisdiction (*Bouchard c Procureur général du Canada,* 2019 QCCA 2067).

[14] Subsection 236(1) of the FPSLRA was enacted in 2005 in direct response to the Supreme Court of Canada's decisions in *Vaughan v Canada,* 2005 SCC 11 [*Vaughan*] and *Weber v Ontario Hydro,* [1995] 2 SCR 929 [*Weber*] (see *Attorney General of Canada, on behalf of Correctional Service of Canada v Robichaud and MacKinnon,* 2013 NBCA 3 [*Robichaud*] at para 3). *Vaughan* and *Weber* stand for the proposition that courts should usually decline to exercise any residual jurisdiction they may have to intervene in employment-related matters. Before a court will intervene in an employment-related dispute, there must be a gap in labour adjudication that causes a "real deprivation of ultimate remedy" (*Weber* at para 57).

[15] This principle was succinctly stated by the Federal Court of Appeal in *Canada v Greenwood,* 2021 FCA 186 [*Greenwood*] at paragraph 130 (leave to appeal ref'd, 2022 CanLII 19060 (SCC)):

> *Vaughan* and the cases that apply it hold that, in most instances, claims from employees subject to federal public sector labour legislation in respect of matters that are not adjudicable before the FPSLREB should not be heard by the courts, as this would constitute an impermissible incursion into the statutory scheme. However, an exception to this general rule allows courts to hear claims that may only be grieved under internal grievance mechanisms if the internal mechanisms are incapable of providing effective redress.

[16] The Defendants say the effect of s 236 of the FPSLRA is to remove any residual discretion this Court may have to intervene in labour disputes involving employees with grievance rights. The Defendants argue that s 236 serves to revoke any statutory grant of jurisdiction this Court might otherwise possess.

[17] Following the enactment of s 236 of the FPSLRA, it appears that no court has intervened in a labour dispute that involves employees who possess grievance rights. The most one can find in the jurisprudence is *obiter* commentary suggesting that an exception might be found if the integrity of the grievance procedure is shown to be compromised based on the evidence presented in a particular case (*Lebrasseur v Canada*, 2007 FCA 330 [*Lebrasseur*]). The onus of establishing that there is room for the exercise of a court's residual discretion lies with a plaintiff (*Lebrasseur* at paras 18-19).

[18] In *Robichaud*, the Court of Appeal of New Brunswick suggested that if the residual discretion to hear a labour dispute continues to exist despite s 236 of the FPSLRA, it will be only in "exceptional" cases: "The truly problematic cases will be those where the grievance process is itself 'corrupt'" (at para 10).

[19] While evidence is not generally admissible on a motion to strike, it may be admitted where a jurisdictional question arises. Evidence as to the nature and efficacy of the suggested alternate processes is necessary to provide a basis for the Court's determination of whether it ought to decline jurisdiction in favour of the alternate administrative remedies (*Greenwood* at paras 95-96).

[20] The Defendants have adduced evidence in support of their motion to strike, but this consists only of an affidavit appending the relevant policy documents as exhibits. No evidence has been tendered respecting "the nature and efficacy of the suggested alternate processes", as contemplated in *Greenwood* (at para 95).

[21] The Defendants maintain that it is sufficient for them to invoke the FAA to demonstrate that the claims of approximately two-thirds of the Plaintiffs are barred by s 236 of the FPSLRA. The Defendants note that the Plaintiffs do not allege the available internal grievance process is "corrupt" or incapable of providing redress. Indeed, the Statement of Claim is silent regarding the potential availability or adequacy of alternative remedies.

[22] It would have been helpful for the Defendants to provide evidence, or alternatively detailed legal submissions, regarding which of the Plaintiffs are subject to s 236 of the FPSLRA and which are not. Instead, considerable time was expended during the hearing of this motion reviewing the Schedules to the FAA in order to determine which groups of Plaintiffs are employed within the CPA. Following the hearing of the motion, the Court directed the parties to confirm the accuracy of the lists of employers that appear in Schedules A and B hereto. Schedules A and B were subsequently approved by the parties through their counsel. To their credit, this was done on consent.

[23] According to paragraph 6 of the Statement of Claim:

> The Plaintiffs are all either:

> (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
>
> (b) Employees of Federal Crown Corporations; and
>
> (c) Employees of federally regulated sectors;
>
> As set out and categorized in the style of cause in the within claim.

[24] While this manner of pleading is unorthodox, it is sufficiently clear. In effect, the categories of employment disclosed in the style of cause are incorporated by reference into the body of the pleading. For the purposes of the Defendants' motion to strike, the Plaintiffs' assertions respecting their places of employment, as identified in the style of cause, must be assumed to be true.

[25] Taken at face value, I am satisfied the pleading confirms that the majority of the Plaintiffs are employed within the CPA. Their claims are therefore barred by s 236 of the FPSLRA.

[26] Before determining whether to exercise any discretion to consider a proceeding, the Court must first be satisfied that the grievance process is not available and would not provide any remedy (*Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy*], at para 32, citing *Public Service Alliance of Canada v Canada (Attorney General)*, 2020 FC 481). As Prothonotary (now Associate Judge) Mireille Tabib explained in *Murphy* in paragraph 33:

> Consequently, and as also suggested in *Lebrasseur v Canada*, 2007 FCA 330, at para 19, once it is established that a person has recourse to a statutory grievance scheme, it is up to the applicant, and not the respondent seeking to have the application dismissed as premature, to establish that the procedure is clearly not available. That is the necessary conclusion, since concluding otherwise and allowing access to the courts whenever the admissibility of a

> grievance is challenged would have the effect of bypassing the exhaustive scheme Parliament intended. It would amount to asking the Court to prejudge the admissibility of a grievance and to usurp the role of the grievance authority in respect of the interpretation and application of the provisions governing the grievance procedure.

[27] Associate Judge Tabib's ruling in *Murphy* was recently upheld by Justice Vanessa Rochester in *Murphy v Canada (Attorney General)*, 2023 FC 57 [*Murphy (Appeal)*].

[28] Even at this preliminary stage, the onus is on the Plaintiffs to establish the Court's jurisdiction over the claims advanced in the Statement of Claim (*Hudson* at para 91; *Murphy (Appeal)* at para 82). I am not persuaded that the Plaintiffs who are employed within the CPA have done so.

[29] On a motion to strike, a plaintiff will satisfy the requirement that the pleadings disclose a reasonable cause of action unless, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at para 63). However, this does not mean that the Plaintiffs' assertions respecting this Court's jurisdiction must be assumed to be true. As Justice Rochester explained in *Murphy (Appeal)* at paragraph 86:

> It is clear that on a motion to strike an application for judicial review, the facts asserted by the applicant in its Notice of Application must be presumed to be true (*Prairies Tubulars (2015) Inc v Canada (Border Services Agency)*, 2018 FC 991 at para 26 and the cases cited therein). This presumption does not extend to the arguments that an applicant may make or any evidence they may submit in response to a motion to strike the Notice of Application. Concluding otherwise would run counter to the teaching of the Federal Court of Appeal in [*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013

> FCA 250] and have the effect of rendering such motions to strike incapable of success, thereby hampering the Court's power to restrain the misuse or abuse of its process (*JP Morgan* at para 48).

[30] Plaintiffs who enjoy statutory grievance rights and allege they have been harmed by the TB Policy or Interim Order must exhaust the grievance process before seeking redress in this Court (*Murphy (Appeal)* at paras 75-76). As I held in *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paragraph 31, permitting premature access to the Court:

> […] would have the effect of undermining the labour grievance process enacted by Parliament. The Court would be preempting the primary role of labour adjudicators in determining questions that pertain to the application of the Vaccination Policy, the extent to which it may be said to infringe employees' rights, whether any infringement can be justified on the grounds of public health, and if not, whether the Applicants are entitled to financial or other compensation. Premature judicial intervention would not be complementary to fundamental principles of labour relations, but destructive of them.

[31] The Plaintiffs argue that their claims are not barred by s 236 of the FPSLRA, because some of the remedies they seek are beyond the powers of a labour adjudicator to grant. They emphasize the declaratory relief sought in the Statement of Claim regarding the constitutional validity of the TB Policy and Interim Order, citing ss 91 and 92(10) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

[32] The Plaintiffs cannot escape the operation of s 236 of the FPSLRA by pleading that their claims are not ordinary workplace disputes, or that some of the remedies they seek are not

available through the internal grievance process. As the Ontario Court of Appeal held in *Bron*, the right to grieve is "very broad" and "[a]lmost all employment-related disputes can be grieved under s 208 of the FPSLRA" (at paras 14-15).

[33] In *Ebadi v Canada*, 2022 FC 834 [*Ebadi*], the plaintiff advanced the argument (at para 35) that:

> […] *Bron* maintains the court's residual discretion to hear a claim when a grievance procedure does not provide an adequate remedy. Further, the Court may assume jurisdiction over claims that, in the usual course, may be barred by section 236, where there is a gap in the statutory scheme, where the events produce a difficulty unforeseen by the scheme, or where "no adequate alternative remedy already exists," as set out in *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v Canadian Pacific Ltd.*, [1996] 2 SCR 495 at para 8 [*Brotherhood*].

[34] Justice Henry Brown rejected this argument, holding that alleged Charter violations may be addressed through the grievance process under the FPSLRA (*Ebadi* at 43-44, citing *Green v Canada (Border Services Agency)*, 2018 FC 414 at paras 10-11). He also affirmed that the grievance procedure operates "in lieu of any right of action", even when a plaintiff's preferred remedy (in that case third-party adjudication) is not available (at paras 49-50):

> In accordance with the analysis in *Green*, the Plaintiff could have challenged the Harassment Policy and Grievance Procedure themselves under sections 208 and 236 of the *FPSRLA*. In addition and in my respectful view, the statutory bar to court litigation set out in subsection 236(2) pre-empts any cause of action in this Court notwithstanding there is no access to third party-adjudication.
>
> Here, the ONCA's reasoning in *Bron* is again relevant:

> [32] Finally, the appellant argues that a superior court must maintain an inherent jurisdiction despite whatever language may be used in s. 236. He relies on *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd*., 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495, [1996] S.C.J. No. 42, at para. 8. As I read that case, it stands for the proposition that a superior court has inherent jurisdiction to provide a remedy where the relevant statutory scheme does not speak to the circumstances at hand. In other words, the court's inherent jurisdiction can fill remedial lacunae in legislation. There is no legislative gap here. Section 236 speaks directly to workplace complaints that are grievable under the legislation. For those complaints, even when there is no access to third-party adjudication, the grievance procedure operates "in lieu of any right of action". [Emphasis added]

[35] Canadian courts have consistently found that harms allegedly suffered by employees as a result of their employers' policies and practices in response to the COVID-19 pandemic are properly addressed by way of grievance, in both unionized and non-unionized workplaces (see *National Organized Workers Union v Sinai Health System*, 2022 ONCA 802 [*Sinai Health*] at para 39 and the cases cited therein). As the Court of Appeal for Ontario held in *Sinai Health* (at para 38):

> At its core, the harm at issue was the potential for being placed on leave without pay or terminated under the Policy, if an employee chose to remain unvaccinated. The appellant's members were not being forced to be vaccinated, denied bodily autonomy, or denied the right to give informed consent to vaccination. They could choose to be vaccinated or not. If they chose not to be vaccinated, they faced being placed on unpaid leave or having their employment terminated. This potential harm is fundamentally related to employment. It is harm which an arbitrator has the tools to remedy. If the appellant were to prevail in the arbitration, an arbitrator could order reinstatement without loss of seniority and compensation for lost wages. There is no palpable and overriding error in the application judge's conclusion that there was no remedial gap in the labour relations regime that warranted the exercise of the Superior Court's residual jurisdiction.

[36] The Plaintiffs who are subject to s 236 of the FPSLRA have not demonstrated that their circumstances constitute "exceptional cases", or that there is a gap in labour adjudication that causes a "real deprivation of ultimate remedy" (*Weber* at para 57; *Vaughan* at paras 22, 39). For these Plaintiffs, the Statement of Claim must be struck in its entirety without leave to amend.

B. *Plaintiffs Not Subject to the FPSLRA*

[37] The Plaintiffs who are employed within the organizations listed in Schedule B hereto are not members of the CPA, as defined in the FAA. The Defendants concede that these Plaintiffs' claims potentially fall within this Court's jurisdiction.

[38] The Defendants nevertheless maintain that the Statement of Claim is drafted so poorly that it fails to disclose any reasonable causes of action. They therefore argue that the Statement of Claim must be struck in its entirety without leave to amend, regardless of whether or not the Plaintiffs are subject to s 236 of the FPSLRA.

[39] The Rules that govern pleadings in this Court provide in relevant part:

Form of pleadings	**Modalités de forme**
173 (1) Pleadings shall be divided into consecutively numbered paragraphs.	**173 (1)** Les actes de procédure sont divisés en paragraphes numérotés consécutivement**.**
Allegations set out separately	**Présentation**
(2) Every allegation in a pleading shall, as far as is practicable, be set out in a separate paragraph.	**(2)** Dans la mesure du possible, chaque prétention contenue dans un

Material facts

174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

[…]

Particulars

181 (1) A pleading shall contain particulars of every allegation contained therein, including

(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

acte de procédure fait l'objet d'un paragraphe distinct.

Exposé des faits

174 Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

[…]

Précisions

181 (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :

a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

[40] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and the relief sought (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*] at para 16). Pleadings play an important role in providing notice and defining the issues to be tried.

[41] The Court and defendants cannot be left to speculate as to how the facts might be variously arranged to support various causes of action. If the Court were to allow parties to plead

bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues (*Mancuso* at paras 16-17).

[42] A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars (*Mancuso* at paras 19-20).

[43] To establish a reasonable cause of action, a statement of claim must "(1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type which the action could produce and the court has jurisdiction to grant" (*Zbarsky v Canada*, 2022 FC 195 at para 13, citing *Bérubé v Canada*, 2009 FC 43 at para 24, aff'd, 2010 FCA 276).

[44] As Justice Beth Allen of the Ontario Superior Court of Justice observed in *Guillaume v Toronto (City)*, 2010 ONSC 5045 (at para 54):

> The importance of clearly drafted and structured pleadings does not require much explanation. Pleadings should be drafted with sufficient clarity and precision so as to give the other party fair notice of the case they are required to meet and of the remedies being sought. The role of pleadings is to assist the court in its quest for the truth. Clearly, confusing, run on and poorly organized pleadings cannot accomplish those goals. Courts have held a pleading may be struck out on the grounds it is unintelligible and lacks clarity […]

[45] The Statement of Claim in this proceeding is almost 50 pages long. Nine pages are devoted to the remedies sought. There are allegations of constitutional invalidity and criminal culpability, broad assertions of scientific knowledge regarding the COVID-19 pandemic, and a claim that some of the public health measures instituted by the Government of Canada amounted to crimes against humanity. Some of the requested remedies are unavailable in a civil action, including administrative declarations and injunctive relief.

[46] For example, the Statement of Claim seeks a declaration that "vaccine passports" violate the Plaintiffs' right to move freely within Canada, or to enter and leave Canada, contrary to s 6 of the Charter. However, the pleading does not particularize any facts suggesting that any of the Plaintiffs were prevented from travelling either within or outside Canada.

[47] The Statement of Claim includes claims for re-instatement of lost employment, payment of back pay, and various benefits. But the pleading is devoid of any material facts pertaining to the personal circumstances of any of the Plaintiffs' employment.

[48] The Statement of Claim alleges that the Defendants have "knowingly engaged in the misfeasance of their public office, and abuse of authority, through their public office" by "[e]xercising a coercive power to force unwanted "vaccination"" under the TB Policy and Interim Order. However, the pleading fails to engage with the substance of the TB Policy and Interim Order, which do not force vaccination and also offer various exemptions and accommodations.

[49] In *Turmel v Canada*, 2021 FC 1095, aff'd, 2022 FCA 166, Justice Russel Zinn upheld a decision of Prothonotary (now Justice) Mandy Aylen to strike a statement of claim challenging certain measures implemented by the Government of Canada to address the COVID-19 pandemic. The plaintiff in that case alleged violations of Charter rights, but neglected to plead material facts or to particularize the alleged Charter infringements. As in this case, the pleading consisted largely of bare assertions.

[50] The Defendants say the Statement of Claim in this proceeding is comparable to the one filed by the same counsel on behalf of the plaintiffs in *Action4Canada v British Columbia (Attorney General)*, 2022 BCSC 1507 [*Action4Canada*]. In that case, the plaintiffs sought damages and other relief from various government entities and employees for harms they allegedly suffered as a result of various restrictions instituted in British Columbia due to the COVID-19 pandemic (*Action4Canada* at para 1).

[51] Justice Alan Ross of the British Columbia Supreme Court granted the defendants' motion to strike the pleading in its entirety, holding as follows (*Action4Canada* at paras 45-48):

> […] the [Notice of Civil Claim [NOCC]], in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".
>
> [46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then

> was) in *Homalco Indian Band v. British Columbia* (1998), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:
>
> > [11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. …
>
> [47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the Rules by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.
>
> [48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.

[52] The Statement of Claim in this proceeding is similarly "bad beyond argument". For substantially the same reasons identified by Justice Ross in *Action4Canada*, it must be struck in its entirety.

[53] Justice Ross granted leave to the plaintiffs in *Action4Canada* to amend their pleading. However, he specified that numerous claims, some of which are also advanced in the present proceeding, are improper in a civil action (*Action4Canada* at paras 52-53). These include allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity.

[54] To this list of impermissible claims must be added the remedies sought in paragraph 4 of the Statement of Claim, which may be obtained only on judicial review and not by action (see *Wojdan v Canada*, 2021 FC 1244):

> (a) An interim stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented;
>
> (b) A final stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented.

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

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

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

III. Conclusion

[58] The Plaintiffs who are employed within the CPA have not established that the available internal recourse mechanisms are incapable of providing them with adequate redress. This Court is therefore without jurisdiction to determine the claims advanced in the Statement of Claim, or should decline to exercise any residual discretion it may have. For those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend.

[59] For those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend. Should the Plaintiffs who are not subject to s 236 of the FPSLRA wish to proceed with a civil action respecting the TB Policy and Interim Order, they must plead their causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting.

ORDER

THIS COURT ORDERS that:

1. The Statement of Claim is struck in its entirety without leave to amend in respect of all Plaintiffs who are subject to s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.

2. For the remaining Plaintiffs, the Statement of Claim is struck in its entirety with leave to amend in accordance with the Reasons that accompany this Order.

3. Costs are awarded to the Defendants, payable forthwith and in any event of the cause, in the all-inclusive sum of $5,000.

"Simon Fothergill"
Judge

Schedule "A"

PLAINTIFFS WHO ARE MEMBERS OF THE CORE PUBLIC ADMINISTRATION

Persons employed within the following organizations and who therefore have grievance rights under the *Federal Public Sector Labour Relations Act* (Schedule I, Schedule IV and Schedule V of the *Financial Administration Act*):

- Atlantic Canada Opportunities Agency
- Canada Border Services Agency
- Canada Revenue Agency
- Canada School of Public Service
- Canadian Coast Guard (Department of Fisheries and Oceans)
- Canadian Food Inspection Agency*
- Canadian Forestry Service (Department of Natural Resources)
- Canadian Institutes of Health Research*
- Canadian Nuclear Safety Commission*
- Canadian Radio-television and Telecommunications Commission
- Canada Revenue Agency*
- Canadian Security Intelligence Service*
- Core Public Service
- Canadian Space Agency
- Correctional Service of Canada
- Courts Administration Service
- Department of Agriculture and Agri-Food
- Department of Canadian Heritage
- Department of Employment and Social Development
- Department of Fisheries and Oceans
- Department of Justice
- Department of National Defence
- Department of Natural Resources
- Department of Transport
- Department of Veterans Affairs
- Elections Canada ("Office of the Chief Electoral Officer" and "The portion of the federal public administration in the Office of the Chief Electoral Officer in which the employees referred to in section 509.3 of the Canada Elections Act occupy their positions")
- Environment and Climate Change Canada (Department of the Environment)
- Federal Economic Development Agency for Southern Ontario
- Global Affairs Canada (Department of Foreign Affairs, Trade and Development)
- Government of Canada

- Immigration, Refugees and Citizenship Canada (Department of Citizenship and Immigration)
- Indigenous and Northern Affairs Canada (Department of Crown-Indigenous Relations and Northern Affairs)
- Indigenous Services Canada (Department of Indigenous Services)
- Innovation, Science and Economic Development Canada
- National Film Board of Canada (National Film Board)*
- National Research Council Canada*
- National Security and Intelligence Review Agency (National Security and Intelligence Review Agency Secretariat)*
- Office of the Auditor General of Canada*
- Parks Canada*
- Polar Knowledge Canada (Canadian High Arctic Research Station)*
- Public Health Agency of Canada
- Public Safety Canada (Department of Public Safety and Emergency Preparedness)
- Public Services and Procurement Canada
- Royal Canadian Mounted Police**
- Service Canada (Department of Employment and Social Development)
- Shared Services Canada
- Staff of the Supreme Court
- Statistics Canada
- Treasury Board

NOTES:

All organizations are part of the core public administration as defined at s 11(1) of the *Financial Administration Act* (Schedules I and IV), except as noted.

* Organizations that are portions of the federal public administration listed in Schedule V (Separate Agencies of the *Financial Administration Act*, whose employees have rights to grieve under the *Federal Public Sector Labour Relations Act*).

** The RCMP is part of the core public administration and is listed in Schedule IV of the *Financial Administration Act*; RCMP members have limited rights to grieve under s 238.24 the *Federal Public Sector Labour Relations Act*, but have other grievance rights under the *Royal Canadian Mounted Police Act*.

Schedule "B"

PLAINTIFFS WHO ARE NOT MEMBERS OF THE CORE PUBLIC ADMINISTRATION

Persons employed within the following organizations:

- Air Canada
- Air Canada Jazz
- Air Inuit
- Bank of Canada
- Bank of Montreal
- BC Coast Pilots Ltd
- BC Ferries
- British Columbia Maritime Employers Association
- Brookfield Global Integrated Solutions
- Canada Mortgage and Housing Corporation
- Canada Pension Plan
- Canada Post
- Canadian National Railway
- Canadian Pacific Railway
- City of Ottawa Garage Fed Regulated
- DP World
- Export Development Canada
- Farm Credit Canada
- G4S Airport Screening
- Garda Security Screening Inc
- Geotech Aviation
- Global Container Terminals Canada
- Greater Toronto Airports Authority
- House of Commons
- Human Resources Branch, Innovation
- Kelowna Airport Fire Fighters
- National Arts Centre
- NAV Canada
- Ontario Northland Transportation Commission
- Ontario Power Generation
- Pacific Pilotage Authority
- Parliamentary Protection Service
- Public Sector Pension Investment Board
- Purolator Inc
- Questral Helicopters

- RBC Royal Bank
- Rise Air
- Rogers Communications Inc
- Royal Canadian Mint
- Sasktel
- Scotiabank
- Seaspan Victoria Docks
- Shaw
- Skynorth Air Ltd
- Telesat Canada
- Via Rail Canada
- Wasaya Airways
- Waterfront Employers of British Columbia
- Westjet
- Westshore Terminals

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1089-22
STYLE OF CAUSE:	KAREN ADELBERG ET AL. v HIS MAJESTY THE KING ET AL.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 19, 2023
JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	FEBRUARY 21, 2023

APPEARANCES:

Rocco Galati	FOR THE PLAINTIFFS
Adam Gilani Renuka Koilpillai	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Rocco Galati Law Firm Professional Corporation	FOR THE PLAINTIFFS
Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANTS