



Date: 20251208

Docket: A-33-25

Citation: 2025 FCA 222

**CORAM: WEBB J.A.
 WOODS J.A.
 LEBLANC J.A.**

BETWEEN:

**FRANCESCO GABRIELE QUALIZZA, JOEL THOMAS WILLIAM ELLIS,
PATRICK MERCIER, JILL LYNE DUCHESNEAU, JOSEPH BENJAMIN
STEWART, ERIC DAVID FAUCHER, SCOTT PETER BACON, STEPHEN TROY
CHLEDOWSKI, AMANDA LEIGH BENHAM, JOSHUA MARTIN MCCULLOCH,
KYLE CORRIVEAU,
JOSEPH DANIEL ERIC LOUIS MONTGRAIN, DUSTIN SHANE WIEBE,
STEPHEN WJ MORRIS, DAVID GARCIA VARGAS, MICHAEL JOSEPH LIS,
NATASHA KATRINA LIS, SOLANGE SINE DJOUECHE, PETER VLASSOV,
FREDERIC VILLENEUVE-NORMAND, ESTATE OF JONATHAN EMMERSON
JENKINSON, VALENTIN LAVROV, MARIE-EVE LABONTE, JESSE DALE
FRIESEN, TANIA CATHERINE NORDLI, ANDRZEJ SKULSKI, DENNIS JOHN
PAUL TONDREAU, EMMY-LOU LAURIE FORGET, DALLAS ALEXANDER
FLAMAND,
CHELSEA ELAINE ROGAL, BARON HORDO, TAYLOR MICHAEL HARVIE,
VANESSA RAE LAROCHELLE, JACQUELINE MARIE FRANCE BOEHME,
JAMES PAUL DANIEL FORMOSA, KAITLYN E CAMPBELL, LUCAS TIMOTHY
VANCUREN, JERMAINE SHERIDAN BURRELL, ANTHONY DAVID HIATT,
MICHAEL ST-LAURENT, ARMAND EDWARD A. GARNER, AMIT SODHI,
CAMILLE FELIX J TURGEON, SAMANTHA GWENDOLYN STYLES,
CAROL-ANN MARY T OUELLETTE, ROBERT JAMES TEREMCHUK,
NATHANIEL J P TONDREAU, NIKOLA J GUY TONDREAU, LISA PAULINE
LEOPOLD, HAILEY NOELLE SCHRODER, DOMINIQUE LAUZIER,
VALERIE OUELLET, JOHN M GILLIS, MORGAN CHRISTOPHER WARREN,
MARK ANDREW GOOD, SEAN MICHAEL MARCOTTE, MARK ANDREW
LOLACHER, GABRIEL VILLENEUVE, KIRA ANNE YAKIMOVICH,
MATHIEU W PETIT-MARCEAU, KIMBERLY NEDRA ETTTEL,
CHRISTOPHER WILLIAM RAMBHAROSE, MICHAEL RYAN FRANK,
EVAN JEFFERY MCFATRIDGE, PIERRE-ELIE LASNIER, ALESSANDRU WARD
FORSTER BROWN, DANIS DOIRON, CARL JOSEPH D RIVEST-MARIER,
JAROSLAW T CIESINSKI, STEPHEN WILLIAM HOLT, RANDOLPH RAYMOND**

JENKINS, ANDREW JOHN MACPHEE, VALERIE PALIN-ROBERT,
ROGER CORY STOESZ, SHANE THOMAS WHITSON, CHRISTIAN KURT
CARTER, MATTHEW JAMES ROWE, DAVE BOUCHARD, LAURIE C. BAKER,
FREDERIC LAUZIER, LUCAS SHANE O'CONNOR, LAURA DIANNE ALLAN,
GEORGE VRINIOTIS, SIENNA GERMAINE QUIRK, CHARLES BRUNO
ALEXANDRE TURMEL, JAROSLAW GRZEGORZ MARCZEWSKI,
CHRISTOPHER NIGHTINGALE ANDERSON, FRANCIS JOSEPH MICHEL
ARCHAMBAULT, CHRISTOPHER RAYMOND AUSTIN, JOHN ANTHONY
BAKLINSKI, DAVID GLEN BARKHOUSE, MICHAEL BARRETTE, DARRIN
THOMAS BEATON, BOBAK BEHESHTI, ANDRES FELIPE BOCANEGRA
BELTRAN, NATHAN KYLE JOHNSON, CONRAD JOSEPH BENOIT, MATHIEU
BERNARD, BRIAN JAMES BEWS, MICHAEL CHRISTOPHER BILL, ROBERT
STEWART BISHOP, JEFFERSON MALCOME BISSENGUE, STEVEN BOLDUC,
THOMAS GILL BONNETT, CHARLES ANTHONY VALMHOR BORG, PATRICK
JAMES BOSCHALK, KARLA RAE BOWLER, KENNETH SCOTT BRADLEY,
DWAYNE ARMAND BRATZKE, RYAN DOUGLAS BREAU, CHARA LOREN
BROWNE, WILLIAM FREDERICK BULL, MARK A CALOW, JAMES GREGORY
CAMERON, BRETT GRANT GORDON CAMPBELL, DAMIAN RONALD CAYER,
JESSE SHAYNE CHAMBERS, VLADIMIR CHARNINE, SHAUN KYLE
CHARPENTIER, DANIEL ROBERT CHESHIRE, DAVE CIMON, CHARLES
BENOIT-JEAN COTE, REMI COTE, MATTHIEU COULOMBE, REBEKAH
KATHLEEN COURTNEY, MAVERICK JEREMY JOSEPH COWX, JONATHAN
WAYNE CROUCH, NICOLE JOHNNA CROWDER,
BARTLOMIEJ DAVID CYCHNER, BEATA MARGARET CZAPLA, SARA DARBY,
BRADY DAMIEN DEDAM, VIRGIL SEVERIN DESSOUROUX,
SEAN ROBERT DIXON, ROBERT ADAM DOLIWA, DANIEL PIERRE DROLET,
SAMUEL DROUIN, BENJAMIN GRAHAM DUNBAR, MATTHEW ALEXANDER J.
DURDA, STEPHEN ANDREW TERENCE ELLS, AUSTIN KARN FAULKNER,
ERIC MICHEL C S FONTAINE, WILLIAM JOSEPH R FORGET, SEAN MICHAEL
FRANCIS, KORY MICHAEL FRASER, JASON JOSEPH KEVIN FRECHETTE,
CHRISTOPHER BENJAMIN FUELLERT, STEVEN JAMES GALLANT, STEVEN
ROY GAMBLE, TANYA LEE GAUDET, EMILIE GAUTHIER-WONG,
TOMMY GAUVREAU, NICOLAS ALEXANDER GLEIS, MARCEL JOSEPH G E
GOBEIL, TAMMY DANIELLE GREENING, EUGENE PIETER GREYLING,
KEVIN CLARENCE J GRIFFIN, DOMINIC JOSEPH S GUENETTE, DARCY
WAYNE HANSEN, BRETT NEVIN WELLCOME, RORY ALEXANDER HAWMAN,
JAMES ADAM HEALD, KYLE KEITH HEPNER, JASON STANLEY GILBERT
IGNATESCU, THANARAJAN JESUTHASAN, KEVIN THOMAS JOHNSON,
GARY ADAM JOHNSTON, RYAN GREGORY JONES, JAMIE ALEXANDER
CURTIS JORSTAD, ATILA STEPHEN KADLECSIK, DUSTY LEWIS KENNEDY,
HUNTER ELMER KERSEY, LIAM OWEN KIROPOULOS, CHRISTOPHER
ROBERT KNORR, EVAN VICTOR KOZIEL, MARTIN PHILIPPE LABROSSE,
GERALD JN- FRITZ LAFORTUNE, ANDRE LAHAYE, KELLY-LEE MARIE LAKE,
NICHOLAS EDWARD LANGE, SARAH-EMILIE LASNIER, DOMINIC JOSEPH M.
LAVOIE, TARA LAVOIE, DRAKE MICHAEL LE COUTEUR, MARC LECLAIR,
PIERRE LEMAY, JONATHAN JOSEPH A. LEMIRE, DANIEL PAUL LOADER,

GARRETT CURTIS LOGAN, JORDAN TERRENCE LOGAN, ALEXANDRE GUY RICHARD LOISELLE, ADAM FERNAND C. LUPIEN, WALTER GEORGE LYON, JOSEPH BREFNI W. MACDONALD, CHRISTIEN TAVIS ROGER MACDONNELL, JEAN JOSEPH MADORE, CHARLES JOSEPH J. MAGNAN, ANDREW ROBERT PAUL MALLORY, MARYLENE GINETTE S. MARTIN, MARCO MASTANTUONO, JAMIE RICHARD MCEWEN, JOHANNES WOUTER MULDER, TYLER EDWIN NEUFELD, LAURA LEE NICHOLSON, KERI MERRIAM, NIXON, JONATHAN NOEL, JOSHUA BRUCE OLSON, CAROLINE MARY AUDREY OUELLET, JOSEPH ANTHONY PAPALIA, MELANIE MARIE I. PARE, ALEXANDRU PATULARU, JOSHUA ALEXANDER PICKFORD, AGNES PINTER-KADLECSIK, JEAN-SIMON PLAMONDON, KRISTER ALEXANDER POHJOLAINEN, AURA A. PON, BRODY ALLEN POZNIKOFF, STEFAN PRISACARI, MONIKA ANNA QUILLAN, ROMAIN RACINE, DOMINIC LAURENS WILLIAM RAGETLI, STEPHANE RATTE, BRYAN THOMAS RICHTER, WILLIAM RIOS, JENNA LEIGH ROBERTS, JOSHUA CALVIN ROBERTS, LAURIE ROSE, RORY ALEXANDER DAVID ROSEN, SEBASTIEN SALVAS, CAMERON RAY S. SANDERS, CARL JEAN G. SAVARD, TORSTEN SCHULZ, PAUL RUSSELL SHAPKA, BLAKE ALEXANDER SHEEDY, QUINTON JAMES STENDER, CALEB ETHAN M. STENER, GABRIEL-ALEXANDRE ST-GELAIS, NICOLAS JOSEPH ST-GERMAIN, ROBERT CHRISTOPHER STULL, JAMES ROARK SUTER, DALEN DREW TANNER, JUSTIN MYLES TENHAGE, JACOB CYRIL THERIAULT, SIMON BOBBY H TILLY, JEAN-PHILIPPE TRUDEL, ALBERT JASON TSCHETTER, SHELLEY DIANE TULLY, MAGALI TURPIN, JULIAN PHILIP TUTINO, GREGORY VINCENT-WALKER, CADE AUSTIN WALKER, BRENNEN BO ANTHONY WATSON, BENJAMIN KYLE WESTON, MATTHEW MAX WHICHER, JOSHUA JAMES WHITE, ANDREW ERNEST WILKOWSKI, DONALD JAMES WILLIAMS, CURTIS MALCOM WILSON, WADE GEORGE WILSON, ANDREW DEAN WYCHNENKA, MARC ZORAYAN, BRANDON TYLER PETER ZWICKER, WILLIAM H L LEVI WALL, KAREN PAIGE NIGHTINGALE, MARC- ANTOINE POULIN, KEEGAN MARSH, RYAN MICHAEL, THOMAS PATRICK HAYES, JAMES MARK CHARLEBOIS, HALSTON RANDAL NICHOLSON, MELISSA-JANE SARAH KRIEGER, GIANLUCA LUCHETTA, BENJAMIN JAMES WILCOX, MARK RONKIN, SERGE JOSEPH LEO FAUCHER, JACOB THOMAS FIDOR, LUCAS GERARD ZIEGELBAUER, SPENCER DANIEL LORD, IAN OCEGUERA, JOHN NESRALLAH, DANIEL NINIAN RODRIGUES, CORY JASON KRUGER, STEPHEN YOUNG SMITH, FOURAT YACoub YOUSIF JAJOU, ANTHONY BILODEAU, JONATHAN MICHAEL RECOSKIE, THOMAS L. EDWARDS, LINDSAY ANNE MACKENZIE, SARAH EVELYN LAPRADE, DANY PILON, JAMES ANDREW COOK, DEREK JOHN GAUTHIER, DAVID ADAM DOBBIE, GABRIELLE CHARPENTIER, DANIEL JOHANNES RECKMAN, ZACHARY CLEELAND, MATEUSZ CAMERON KOWALSKI, TARA J. MACDONALD, PAUL DAVID WILSON, BRENDAN V. T. LEBERT, JOCELYN LAMOTTE, ANTHONY J. DUKE, RILEY MALCOLM MACPHERSON, KIM NOEL LAUZON, KURTIS ROCKEFELLER RUTHERFORD, SERGIU GEORGE CANDEA, JESSE HENRY FIELD, WILLIAM EDWARD BRENDON, CAMERON SAMUEL NOBERT, DAVID

**HOUDE, ALYSSA JOY BLATKEWICZ, COLIN PERRY KAISER, FABRICE
DOURLENT, CORY LANCE GARGIN, ANITA GRACE HESSLING, JENNIFER
BETHANY FRIZZLEY, DAVID ANDREW BENSON, BRANDON JOHN
ARMSTRONG, REJEAN BERUBE,
JEAN-PHILIPPE JOSEPH BOUCHARD, DHILLON DAVID COLE,
PIERRE-OLIVIER COTE-GUAY, IAN M MENZIES, ERIC MONNIN, ELLIOT
GAMACHE, NICHOLAS NEIL LLOYD CROCKER, ROBERT ALLAN
HENDERSON, GABRIEL GILLES RJ RAMSAY, DEVIN JAMES MCKENNA**

Appellants

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA, CHIEF OF THE DEFENCE
STAFF GENERAL WAYNE EYRE, VICE CHIEF OF DEFENCE STAFF
LIEUTENANT-GENERAL FRANCES J ALLEN, LIEUTENANT GENERAL
JOCELYN J M J PAUL, VICE ADMIRAL ANGUS L TOPSHEE, and LIEUTENANT
GENERAL ERIC J KENNY, MINISTER OF NATIONAL DEFENCE, THE
HONOURABLE ANITA ANAND, FORMER DEPUTY MINISTER OF NATIONAL
DEFENCE JODY THOMAS, SURGEON GENERAL MAJOR-GENERAL JGM
BILODEAU, CHAPLAIN GENERAL BRIGADIER- GENERAL JLG BELISLE,
JUDGE ADVOCATE GENERAL REAR-ADMIRAL GENEVIEVE BERNATCHEZ,
and BRIGADIER GENERAL LIAM WADE RUTLAND**

Respondents

Heard at Calgary, Alberta, on December 8, 2025.
Judgment delivered from the Bench at Calgary, Alberta, on December 8, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

LEBLANC J.A.



Date: 20251208

Docket: A-33-25

Citation: 2025 FCA 222

**CORAM: WEBB J.A.
 WOODS J.A.
 LEBLANC J.A.**

BETWEEN:

**FRANCESCO GABRIELE QUALIZZA, JOEL THOMAS WILLIAM ELLIS,
PATRICK MERCIER, JILL LYNE DUCHESNEAU, JOSEPH BENJAMIN
STEWART, ERIC DAVID FAUCHER, SCOTT PETER BACON, STEPHEN TROY
CHLEDOWSKI, AMANDA LEIGH BENHAM, JOSHUA MARTIN MCCULLOCH,
KYLE CORRIVEAU,
JOSEPH DANIEL ERIC LOUIS MONTGRAIN, DUSTIN SHANE WIEBE,
STEPHEN WJ MORRIS, DAVID GARCIA VARGAS, MICHAEL JOSEPH LIS,
NATASHA KATRINA LIS, SOLANGE SINE DJOUECHE, PETER VLASSOV,
FREDERIC VILLENEUVE-NORMAND, ESTATE OF JONATHAN EMMERSON
JENKINSON, VALENTIN LAVROV, MARIE-EVE LABONTE, JESSE DALE
FRIESEN, TANIA CATHERINE NORDLI, ANDRZEJ SKULSKI, DENNIS JOHN
PAUL TONDREAU, EMMY-LOU LAURIE FORGET, DALLAS ALEXANDER
FLAMAND,
CHELSEA ELAINE ROGAL, BARON HORDO, TAYLOR MICHAEL HARVIE,
VANESSA RAE LAROCHELLE, JACQUELINE MARIE FRANCE BOEHME,
JAMES PAUL DANIEL FORMOSA, KAITLYN E CAMPBELL, LUCAS TIMOTHY
VANCUREN, JERMAINE SHERIDAN BURRELL, ANTHONY DAVID HIATT,
MICHAEL ST-LAURENT, ARMAND EDWARD A. GARNER, AMIT SODHI,
CAMILLE FELIX J TURGEON, SAMANTHA GWENDOLYN STYLES,
CAROL-ANN MARY T OUELLETTE, ROBERT JAMES TEREMCHUK,
NATHANIEL J P TONDREAU, NIKOLA J GUY TONDREAU, LISA PAULINE
LEOPOLD, HAILEY NOELLE SCHRODER, DOMINIQUE LAUZIER,
VALERIE OUELLET, JOHN M GILLIS, MORGAN CHRISTOPHER WARREN,
MARK ANDREW GOOD, SEAN MICHAEL MARCOTTE, MARK ANDREW
LOLACHER, GABRIEL VILLENEUVE, KIRA ANNE YAKIMOVICH,
MATHIEU W PETIT-MARCEAU, KIMBERLY NEDRA ETTTEL,
CHRISTOPHER WILLIAM RAMBHAROSE, MICHAEL RYAN FRANK,
EVAN JEFFERY MCFATRIDGE, PIERRE-ELIE LASNIER, ALESSANDRU WARD
FORSTER BROWN, DANIS DOIRON, CARL JOSEPH D RIVEST-MARIER,
JAROSLAW T CIESINSKI, STEPHEN WILLIAM HOLT, RANDOLPH RAYMOND**

JENKINS, ANDREW JOHN MACPHEE, VALERIE PALIN-ROBERT,
ROGER CORY STOESZ, SHANE THOMAS WHITSON, CHRISTIAN KURT
CARTER, MATTHEW JAMES ROWE, DAVE BOUCHARD, LAURIE C. BAKER,
FREDERIC LAUZIER, LUCAS SHANE O'CONNOR, LAURA DIANNE ALLAN,
GEORGE VRINIOTIS, SIENNA GERMAINE QUIRK, CHARLES BRUNO
ALEXANDRE TURMEL, JAROSLAW GRZEGORZ MARCZEWSKI,
CHRISTOPHER NIGHTINGALE ANDERSON, FRANCIS JOSEPH MICHEL
ARCHAMBAULT, CHRISTOPHER RAYMOND AUSTIN, JOHN ANTHONY
BAKLINSKI, DAVID GLEN BARKHOUSE, MICHAEL BARRETTE, DARRIN
THOMAS BEATON, BOBAK BEHESHTI, ANDRES FELIPE BOCANEGRA
BELTRAN, NATHAN KYLE JOHNSON, CONRAD JOSEPH BENOIT, MATHIEU
BERNARD, BRIAN JAMES BEWS, MICHAEL CHRISTOPHER BILL, ROBERT
STEWART BISHOP, JEFFERSON MALCOME BISSENGUE, STEVEN BOLDUC,
THOMAS GILL BONNETT, CHARLES ANTHONY VALMHOR BORG, PATRICK
JAMES BOSCHALK, KARLA RAE BOWLER, KENNETH SCOTT BRADLEY,
DWAYNE ARMAND BRATZKE, RYAN DOUGLAS BREAU, CHARA LOREN
BROWNE, WILLIAM FREDERICK BULL, MARK A CALOW, JAMES GREGORY
CAMERON, BRETT GRANT GORDON CAMPBELL, DAMIAN RONALD CAYER,
JESSE SHAYNE CHAMBERS, VLADIMIR CHARNINE, SHAUN KYLE
CHARPENTIER, DANIEL ROBERT CHESHIRE, DAVE CIMON, CHARLES
BENOIT-JEAN COTE, REMI COTE, MATTHIEU COULOMBE, REBEKAH
KATHLEEN COURTNEY, MAVERICK JEREMY JOSEPH COWX, JONATHAN
WAYNE CROUCH, NICOLE JOHNNA CROWDER,
BARTLOMIEJ DAVID CYCHNER, BEATA MARGARET CZAPLA, SARA DARBY,
BRADY DAMIEN DEDAM, VIRGIL SEVERIN DESSOUROUX,
SEAN ROBERT DIXON, ROBERT ADAM DOLIWA, DANIEL PIERRE DROLET,
SAMUEL DROUIN, BENJAMIN GRAHAM DUNBAR, MATTHEW ALEXANDER J.
DURDA, STEPHEN ANDREW TERENCE ELLS, AUSTIN KARN FAULKNER,
ERIC MICHEL C S FONTAINE, WILLIAM JOSEPH R FORGET, SEAN MICHAEL
FRANCIS, KORY MICHAEL FRASER, JASON JOSEPH KEVIN FRECHETTE,
CHRISTOPHER BENJAMIN FUELLERT, STEVEN JAMES GALLANT, STEVEN
ROY GAMBLE, TANYA LEE GAUDET, EMILIE GAUTHIER-WONG,
TOMMY GAUVREAU, NICOLAS ALEXANDER GLEIS, MARCEL JOSEPH G E
GOBEIL, TAMMY DANIELLE GREENING, EUGENE PIETER GREYLING,
KEVIN CLARENCE J GRIFFIN, DOMINIC JOSEPH S GUENETTE, DARCY
WAYNE HANSEN, BRETT NEVIN WELLCOME, RORY ALEXANDER HAWMAN,
JAMES ADAM HEALD, KYLE KEITH HEPNER, JASON STANLEY GILBERT
IGNATESCU, THANARAJAN JESUTHASAN, KEVIN THOMAS JOHNSON,
GARY ADAM JOHNSTON, RYAN GREGORY JONES, JAMIE ALEXANDER
CURTIS JORSTAD, ATILA STEPHEN KADLECSIK, DUSTY LEWIS KENNEDY,
HUNTER ELMER KERSEY, LIAM OWEN KIROPOULOS, CHRISTOPHER
ROBERT KNORR, EVAN VICTOR KOZIEL, MARTIN PHILIPPE LABROSSE,
GERALD JN- FRITZ LAFORTUNE, ANDRE LAHAYE, KELLY-LEE MARIE LAKE,
NICHOLAS EDWARD LANGE, SARAH-EMILIE LASNIER, DOMINIC JOSEPH M.
LAVOIE, TARA LAVOIE, DRAKE MICHAEL LE COUTEUR, MARC LECLAIR,
PIERRE LEMAY, JONATHAN JOSEPH A. LEMIRE, DANIEL PAUL LOADER,

GARRETT CURTIS LOGAN, JORDAN TERRENCE LOGAN, ALEXANDRE GUY
RICHARD LOISELLE, ADAM FERNAND C. LUPIEN, WALTER GEORGE LYON,
JOSEPH BREFNI W. MACDONALD, CHRISTIEN TAVIS ROGER MACDONNELL,
JEAN JOSEPH MADORE, CHARLES JOSEPH J. MAGNAN,
ANDREW ROBERT PAUL MALLORY, MARYLENE GINETTE S. MARTIN,
MARCO MASTANTUONO, JAMIE RICHARD MCEWEN, JOHANNES WOUTER
MULDER, TYLER EDWIN NEUFELD, LAURA LEE NICHOLSON, KERI
MERRIAM, NIXON, JONATHAN NOEL, JOSHUA BRUCE OLSON, CAROLINE
MARY AUDREY OUELLET, JOSEPH ANTHONY PAPALIA, MELANIE MARIE I.
PARE, ALEXANDRU PATULARU, JOSHUA ALEXANDER PICKFORD, AGNES
PINTER-KADLECSIK, JEAN-SIMON PLAMONDON, KRISTER ALEXANDER
POHJOLAINEN, AURA A. PON, BRODY ALLEN POZNIKOFF, STEFAN
PRISACARI, MONIKA ANNA QUILLAN, ROMAIN RACINE, DOMINIC LAURENS
WILLIAM RAGETLI, STEPHANE RATTE, BRYAN THOMAS RICHTER,
WILLIAM RIOS, JENNA LEIGH ROBERTS, JOSHUA CALVIN ROBERTS, LAURIE
ROSE, RORY ALEXANDER DAVID ROSEN, SEBASTIEN SALVAS, CAMERON
RAY S. SANDERS, CARL JEAN G. SAVARD, TORSTEN SCHULZ, PAUL RUSSELL
SHAPKA, BLAKE ALEXANDER SHEEDY, QUINTON JAMES STENDER, CALEB
ETHAN M. STENER, GABRIEL-ALEXANDRE ST-GELAIS, NICOLAS JOSEPH ST-
GERMAIN, ROBERT CHRISTOPHER STULL, JAMES ROARK SUTER, DALEN
DREW TANNER, JUSTIN MYLES TENHAGE, JACOB CYRIL THERIAULT,
SIMON BOBBY H TILLY,
JEAN-PHILIPPE TRUDEL, ALBERT JASON TSCHETTER, SHELLEY DIANE
TULLY, MAGALI TURPIN, JULIAN PHILIP TUTINO, GREGORY VINCENT-
WALKER, CADE AUSTIN WALKER, BRENNEN BO ANTHONY WATSON,
BENJAMIN KYLE WESTON, MATTHEW MAX WHICHER, JOSHUA JAMES
WHITE, ANDREW ERNEST WILKOWSKI, DONALD JAMES WILLIAMS, CURTIS
MALCOM WILSON, WADE GEORGE WILSON, ANDREW DEAN WYCHNENKA,
MARC ZORAYAN, BRANDON TYLER PETER ZWICKER, WILLIAM H L LEVI
WALL, KAREN PAIGE NIGHTINGALE, MARC- ANTOINE POULIN, KEEGAN
MARSH, RYAN MICHAEL, THOMAS PATRICK HAYES, JAMES MARK
CHARLEBOIS, HALSTON RANDAL NICHOLSON, MELISSA-JANE SARAH
KRIEGER, GIANLUCA LUCHETTA, BENJAMIN JAMES WILCOX, MARK
RONKIN, SERGE JOSEPH LEO FAUCHER, JACOB THOMAS FIDOR, LUCAS
GERARD ZIEGELBAUER, SPENCER DANIEL LORD, IAN OCEGUERA, JOHN
NESRALLAH, DANIEL NINIAN RODRIGUES, CORY JASON KRUGER, STEPHEN
YOUNG SMITH, FOURAT YACoub YOUSIF JAJOU, ANTHONY BILODEAU,
JONATHAN MICHAEL RECOSKIE, THOMAS L. EDWARDS, LINDSAY ANNE
MACKENZIE, SARAH EVELYN LAPRADE, DANY PILON, JAMES ANDREW
COOK, DEREK JOHN GAUTHIER, DAVID ADAM DOBBIE, GABRIELLE
CHARPENTIER, DANIEL JOHANNES RECKMAN, ZACHARY CLEELAND,
MATEUSZ CAMERON KOWALSKI, TARA J. MACDONALD, PAUL DAVID
WILSON, BRENDAN V. T. LEBERT, JOCELYN LAMOTTE, ANTHONY J. DUKE,
RILEY MALCOLM MACPHERSON, KIM NOEL LAUZON, KURTIS
ROCKEFELLER RUTHERFORD, SERGIU GEORGE CANDEA, JESSE HENRY
FIELD, WILLIAM EDWARD BRENDON, CAMERON SAMUEL NOBERT, DAVID

**HOUDE, ALYSSA JOY BLATKEWICZ, COLIN PERRY KAISER, FABRICE
DOURLENT, CORY LANCE GARGIN, ANITA GRACE HESSLING, JENNIFER
BETHANY FRIZZLEY, DAVID ANDREW BENSON, BRANDON JOHN
ARMSTRONG, REJEAN BERUBE,
JEAN-PHILIPPE JOSEPH BOUCHARD, DHILLON DAVID COLE,
PIERRE-OLIVIER COTE-GUAY, IAN M MENZIES, ERIC MONNIN, ELLIOT
GAMACHE, NICHOLAS NEIL LLOYD CROCKER, ROBERT ALLAN
HENDERSON, GABRIEL GILLES RJ RAMSAY, DEVIN JAMES MCKENNA**

Appellants

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA, CHIEF OF THE DEFENCE
STAFF GENERAL WAYNE EYRE, VICE CHIEF OF DEFENCE STAFF
LIEUTENANT-GENERAL FRANCES J ALLEN, LIEUTENANT GENERAL
JOCELYN J M J PAUL, VICE ADMIRAL ANGUS L TOPSHEE, and LIEUTENANT
GENERAL ERIC J KENNY, MINISTER OF NATIONAL DEFENCE, THE
HONOURABLE ANITA ANAND, FORMER DEPUTY MINISTER OF NATIONAL
DEFENCE JODY THOMAS, SURGEON GENERAL MAJOR-GENERAL JGM
BILODEAU, CHAPLAIN GENERAL BRIGADIER- GENERAL JLG BELISLE,
JUDGE ADVOCATE GENERAL REAR-ADMIRAL GENEVIEVE BERNATCHEZ,
and BRIGADIER GENERAL LIAM WADE RUTLAND**

Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Calgary, Alberta, on December 8, 2025).

LEBLANC J.A.

[1] The appellants, who are all current or former members of the Canadian Armed Forces (CAF), appeal from an order of the Federal Court (*per* Manson J.) (the Judge), dated January 14, 2025 (the Order), refusing to extend the time that would have allowed them to appeal an order of an Associate Judge of that Court, dated November 13, 2024 (2024 FC 1801), striking their

amended Statement of Claim, without leave to amend, pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106 (the Rules).

[2] The amended Statement of Claim asserts causes of action under various provisions of the *Canadian Charter of Rights and Freedoms*, and various alleged actionable torts, including the tort of misfeasance in public office, arising from the vaccination requirements for CAF members set out in a series of Directives issued by the CAF's Chief of Defence Staff during the COVID-19 pandemic.

[3] The Associate Judge was satisfied that the Statement of Claim lacked basic elements of a proper pleading and failed to disclose a reasonable cause of action. She was satisfied as well that the Federal Court ought to decline jurisdiction over the appellants' claims and defer to the grievance process established under the *National Defence Act*, R.S.C. 1985, c. N-5.

[4] According to Rule 51 of the Rules, the appellants had 10 days from the date of the Associate Judge's order to appeal it to a judge of the Federal Court. They failed to do so. It is only on December 12, 2024, that is 29 days after the date of the order, that the appellants brought a motion seeking: (i) "leave for an extension of time to apply for Appeal of a[n] [associate judge] order"; and (ii) "leave to commence an application for Appeal under Federal Courts Act (*sic*) Section 51(1)" (the Motion).

[5] In dismissing the Motion, the Judge first noted a number of issues with the notice of motion and concluded that the only valid request before him was the request for an extension of

time to appeal the Associate Judge's order under Rule 8 of the Rules. The Judge also noted that the affidavit filed in support of the Motion (the Affidavit), which speaks to the steps allegedly taken to explain the delay in bringing the Motion, was that of the appellants' counsel. Quoting Rule 82 of the Rules, the Judge held that to the extent the Affidavit was providing evidence in respect of a contentious matter, it was improper and should be disregarded.

[6] On the actual merits of the request for an extension of time, the Judge determined that the appellants had failed to satisfy any of the jurisprudential criteria that must be considered on such motions, as set out in *Canada (Attorney General) v. Hennelly*, 1999 167 FTR 158 (*Hennelly*), that is: (i) a continuing intention to pursue an appeal of the Associate Judge's order; (ii) that their proposed appeal had some merit; (iii) that the respondents would not be prejudiced by the delay; and (iv) that there was a reasonable explanation for the delay.

[7] In particular, the Judge held that there was no evidence supporting an intent to appeal, even when considering the Affidavit (Order at paras. 12-13). He further held that both the Affidavit and the appellants' written submissions in support of the Motion failed to address how the appeal might succeed (Order at para. 15). On prejudice, the Judge found that although the respondents did not claim to be prejudiced by the delay in bringing the Motion, they were "certainly going to be prejudiced" by the fact the appellants were seeking an additional delay – that is up to the end of January 2025 – to file a "full motion record for an Appeal" (Order at paras. 19-21). According to the Judge, the respondents, in such context, were facing "indefinite delay going forward". Finally, the Judge determined that both the 29-day delay and the additional 6-week delay sought to create a "full motion record for an Appeal", were not

explained in any rational sense, even, again, when considering the Affidavit (Order at paras. 22-23).

[8] The Judge concluded that the interests of justice did not “justify the Court allowing poorly prosecuted litigation to proceed forward when there is no likelihood of success” (Order at para. 24).

[9] It is trite that whether to grant an extension of time is a discretionary decision (*Koch v. Borgatti Estate*, 2022 FCA 201 at para. 39). It is trite as well that discretionary decisions made by Federal Court judges are reviewable by this Court under the appellate standard of review, meaning that questions of law are reviewable on the correctness standard whereas findings of fact and findings of mixed fact and law can only be overturned in the presence of a palpable and overriding error (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 79; *Housen v. Nikolaisen*, 2002 SCC 33; *Spectrum Brands, Inc. v. Schneider Electric Industries SAS*, 2021 FCA 51 at para. 6 (*Spectrum Brands*)). A palpable error means an error that is “obvious” whereas for an error to be overriding, it must go “to the very core of the outcome of the case”. That standard is “highly deferential” and is “not easily met” (*Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46; *Spectrum Brands* at para. 7; *Western Oilfield Equipment Rentals Ltd. v. M-I L.L.C.*, 2021 FCA 24, at para. 11).

[10] Bearing these general principles in mind, we are all of the view that the present appeal cannot succeed. First, there is no dispute that in applying the *Hennelly* test, the Judge identified and applied the correct legal test to the appellants’ request for an extension of time. There is no

legal error there. Then, the question becomes whether the Judge committed a palpable and overriding error in applying that test to the facts that were before him. We see none.

[11] The appellants contend that the Order is undermined by two fatal flaws. First, they say that it rests on an unduly formalistic application of procedural rules that fails to give due weight to the seriousness of the constitutional issues raised in the amended Statement of Claim. This contention has no merit as nothing in the dismissal of the Motion turns on the procedural deficiencies identified by the Judge, including the impropriety of the Affidavit. The Judge did consider the merits of the appellants' request for an extension of time and did so by considering the content of the Affidavit.

[12] Second, the appellants contend that the Judge erred in concluding that their proposed appeal had no likelihood of success. In fact, the bulk of the appellants' submissions in this appeal focuses on the merits of some aspects of the Associate Judge's order. The appellants contend in this respect that the Associate Judge erred: (i) in treating their claim as improperly bypassing the CAF grievance system; (ii) in concluding that that system was an adequate alternative remedy; and (iii) in striking the amended Statement of Claim without leave to amend.

[13] One major problem with these submissions is that nothing of that sort was put to the Judge. As the Judge correctly noted, both the Affidavit and the appellants' written submissions in support of the Motion are silent as to how the appeal of the Associate Judge's order might be successful (Order at para. 15). This problem is exacerbated by the fact that these submissions are based, in large part, on documents, mostly directives and reports on reviews of the *National*

Defence Act and the CAF, that were not before the Judge and that were appended, in e-versions, to the appellants' Memorandum of Fact and Law in this appeal.

[14] As the respondents correctly point out in their written submissions, the Judge cannot be faulted for not considering documents and submissions that were not put to him. Further, this Court cannot consider these documents either, especially the Directives and the reports, and the submissions that rely on them, as they are not properly before this Court. To the extent that these documents are new evidence, they could only be added to this Court's record with leave of the Court pursuant to Rule 351 of the Rules. No such leave application, which can only be granted in "special circumstances", was sought by the appellants in this appeal. As this Court stated in *Kahnapace v. Canada (Attorney General)*, 2010 FCA 70, at paragraph 4, evidence cannot be put before the Court by means of a memorandum of fact and law.

[15] This, in and of itself, is fatal to the appellants' argument that the Judge erred in concluding that they had not established that their proposed appeal of the Associate Judge's order had some merit.

[16] At the hearing of this appeal, the appellants insisted that the *Hennelly* test was applied too restrictively by the Judge, given the potential merit of their claims. However, it is important to underscore that it is not the role of this Court to proceed with its own assessment of the *Hennelly* test and to do so, moreover, based on a significantly different – improperly constituted – record than the one that was before the Judge. Our role, again, is to determine whether the Judge committed a palpable and overriding error in concluding that the appellants had not established

that their claims, based on the record before him, had merit. We find that he did not commit such an error.

[17] One other major problem with this appeal is that the appellants, at best, only superficially address the Judge's application of the other *Hennelly* criteria (intent to appeal, delay and prejudice) to the circumstances of the case. There is nothing for us, therefore, to conclude that the appellants have met the highly deferential palpable and overriding error standard on these issues.

[18] For all these reasons, the appeal will be dismissed with costs to the respondents fixed in the all-inclusive amount of \$2,340.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-33-25
STYLE OF CAUSE:	FRANCESCO GABRIELE QUALIZZA et al. v. HIS MAJESTY THE KING IN RIGHT OF CANADA et al.
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	DECEMBER 8, 2025
REASONS FOR JUDGMENT OF THE COURT BY:	WEBB J.A. WOODS J.A. LEBLANC J.A.
DELIVERED FROM THE BENCH BY:	LEBLANC J.A.

APPEARANCES:

Catherine M. Christensen	FOR THE APPELLANTS
Barry Benkendorf	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Valour Legal Action Centre St. Albert, Alberta	FOR THE APPELLANTS
Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENTS