



FEDERAL COURT

Court File No.:

T-168-22

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

**Applicants**

and

**THE MINISTER OF TRANSPORT AND ATTORNEY GENERAL OF CANADA**

**Respondents**

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

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**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

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**TO THE RESPONDENTS:**

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Ottawa.

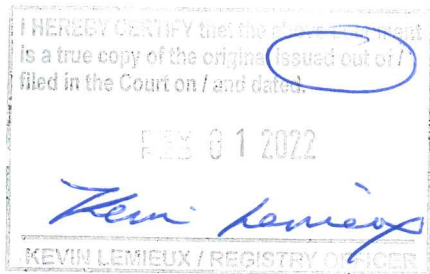
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you

must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitors WITHIN 10 DAYS after being served with this Notice of Application.

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 OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

January 31, 2022



**ORIGINAL SIGNED BY  
KEVIN LEMIEUX  
A SIGNÉL'ORIGINAL**

Issued by: \_\_\_\_\_  
(Registry Officer)

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**Solicitor for the Respondents**

## APPLICATION

1. This is an application, made pursuant to sections 18(1) and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, for judicial review in respect of the Minister of Transport's decision to make an interim order restricting the mobility and other rights of Canadians based on their Covid-19 vaccination status. The Minister's decision was made pursuant to section 6.41 of the *Aeronautics Act*, R.S.C. 1985, c. A-2 ("the *Aeronautics Act*") and was communicated to the Applicants on or about January 15, 2022, in the form of *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52* (the "Decision").
2. The Decision implements restrictions on Canadians that are not related to a "significant risk, direct or indirect, to aviation safety or the safety of the public" and are *ultra vires* the authority of the *Aeronautics Act*. The Decision, with limited exceptions, effectively bans Canadians who have chosen not to receive an experimental medical treatment from domestic and international travel by airplane. The result is discrimination and a gross violation of the constitutionally protected rights of Canadians, as guaranteed by the *Canadian Charter of Rights and Freedoms* (the "Charter").
3. This is an Application for Judicial Review; and is a constitutional and quasi-constitutional *vires* challenge in relation to the Decision in respect of the *Constitution Act, 1867*, 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 (*Constitution Act, 1867*), the *Constitution Act, 1982*, 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*), and on the basis that:
  - a. The Decision has been created and promulgated in a manner, means and in a form which is incorrect, unreasonable, an impermissible sub-delegation of authority, tainted by preconceived notions and consideration of extraneous and irrelevant factors, lacking in natural justice, and otherwise *ultra vires* the enabling statute, the *Aeronautics Act* and, or in the alternative, the *Constitution Act, 1867*;
  - b. The Decision breaches the rights afforded to the Applicants by sections 2(a), 6, 7, 8, and 15 of the *Charter*; and

- c. The Decision is inconsistent with and contrary to the *Canadian Bill of Rights*, SC 1960, c 44 (*Bill of Rights*).

4. This Application seeks, *inter alia*,

- a. An order of *certiorari* quashing and setting aside the Decision; and
- b. A Declaration that said Decision is *ultra vires* the *Aeronautics Act* and an unconstitutional breach of the Applicants' *Charter* rights.

**1. Relief Sought**

**(a) *Relief regarding Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52***

5. The Applicants make application for:

- a. A Declaration pursuant to section 18(1) of the *Federal Courts Act* that the Decision is *ultra vires* the *Aeronautics Act* and therefore of no force and effect;
- b. A Declaration that the Decision is invalid due to errors in law, jurisdiction, fact and/or mixed fact and law;
- c. A Declaration pursuant to section 52(1) of the *Constitution Act, 1982* that sections 17.1 to 17.4, 17.7, 17.9, 17.10, 17.22, 17.30 to 17.33, 17.36 and 17.40 of the Decision (“the Vaccine Provisions”) violate the Applicants’ sections 2(a), 6, 7, 8, and 15 *Charter* rights as set out below, and that these violations are not demonstrably justified under section 1 of the *Charter*;
- d. Disclosure from the Governor in Council, of all information relied upon by the Minister of Transport in forming the Decision that the freedom of mobility of Canadians should be restricted based upon vaccination status, pursuant to Rule 317 of the *Federal Courts Rules*;
- e. Disclosure from the Respondents, of all information obtained pursuant to section 6.41(1.2) of the *Aeronautics Act*, RSC 1985, c A-2 and any relevant materials relied on in forming the Decision and obtained during the course of consultations with

“any person or organization” the Minister of Transport considered appropriate in the circumstances;

- f. In the alternative, a Declaration pursuant to section 24(1) of the *Charter* that the Vaccine Provisions of the Decision unreasonably and unjustifiably infringe:
  - i. Section 2(a) of the *Charter*;
  - ii. Section 6 of the *Charter*;
  - iii. Section 7 of the *Charter*;
  - iv. Section 8 of the *Charter*; and
  - v. Section 15 of the *Charter*.
- g. A Declaration that the Vaccine Provisions of the Decision violate sections 1(a) and (b) of the *Canadian Bill of Rights*, S.C. 1960, c. 44, and are *ultra vires* or otherwise unlawful;
- h. A Declaration that the Vaccine Provisions of the Decision violate Articles 7, 12, 18, and 26 of the *International Covenant on Civil and Political Rights*;
- i. In the further alternative, a Declaration that “natural immunity to Covid-19”, as evidenced by a serology test, be recognized as equivalent to being “fully vaccinated”, as defined in the Decision;
- j. A Declaration prohibiting the Respondents from issuing subsequent orders of a substantially similar or identical nature that prohibit or further restrict individuals who are not vaccinated against Covid-19 from boarding aircraft leaving Canadian airports;
- k. An Order pursuant to section 18(1) of the *Federal Courts Act* and section 24(1) of the *Charter* in the nature of *certiorari* quashing the Vaccine Provisions of the Decision;
- l. An Order abridging the time for service of this Application and allowing the

Application to proceed on an expedited and urgent basis;

- m. An order for an Extension of Time to file supporting affidavits and documents pursuant to Rule 8 of the *Federal Courts Rules*;
- n. The costs of this application; and
- o. Such further and other relief as counsel may request and this Honourable Court may permit.

**2. The grounds for the application are:**

**(a) *The Parties***

The Honourable A. Brian Peckford

6. The Applicant, The Honourable A. Brian Peckford (“Mr. Peckford”), is a 79-year-old man residing in the City of Parksville, on Vancouver Island in the Province of British Columbia. He is a Canadian citizen and served as the third Premier of Newfoundland between March 26, 1979, and March 22, 1989. He is the last surviving First Minister who drafted the *Constitution Act, 1982*, including the *Charter*.

Leesha Nikkanen

7. The Applicant, Leesha Nikkanen, (“Ms. Nikkanen”), is a 44-year-old woman residing in Surrey, British Columbia. She is a Canadian citizen, a high school teacher, and Career Development Facilitator in Surrey. She lives with her husband in Surrey, but the rest of her family lives in Ontario and Alberta.

Ken Baigent

8. The Applicant, Ken Baigent (“Mr. Baigent”), is a 57-year-old man residing part-time in Yellowknife, Northwest Territories since 2012. His wife and son had to relocate to Jordan, Ontario in 2015 to manage parental elder-care needs. He is a Canadian citizen and is a Senior Management Specialist for the Arctic Energy Alliance in Yellowknife. For the past seven years, he has worked a hybrid schedule where he completes field work in the

Northwest Territories and completes client reports and other project work from an office in Jordan, Ontario.

#### Drew Belobaba

9. The Applicant, Drew Belobaba (“Mr. Belobaba”) is a 48-year-old man residing in the United Kingdom, who has family in Canada and a residence in Outlook, Saskatchewan. He is a Canadian citizen and is self-employed as a courier.

#### Natalie Grcic

10. The Applicant, Natalie Grcic (“Ms. Grcic”) is a 38-year-old woman residing in Gatineau, Québec. She was born in South Africa and is a permanent resident in Canada. She is trained as a lawyer but is currently a homemaker. Ms. Grcic has elderly parents and close family in South Africa and other family living in Europe.

#### Aedan MacDonald

11. The Applicant, Aedan MacDonald (“Mr. MacDonald”) is an 18-year-old man attending his first year at Trinity Western University (“Trinity”) on a rugby scholarship. He currently resides in Langley, British Columbia. He is from Ontario, where his family still resides. He is a Canadian citizen.

#### The Respondents

12. The Respondents are:
- a. Her Majesty the Queen (in right of Canada), as represented by the Attorney General of Canada on behalf of the Governor General in Council (“GIC”);
  - b. The Honourable Omar Alghabra, Minister of Transport; and
  - c. Transport Canada.

#### **(b) *Brief Statement of Facts***

13. On January 15, 2022, the Respondent, the Honourable Omar Alghabra issued the Decision pursuant to section 6.41 of the *Aeronautics Act*. The Decision came into effect January 15,

2022 and does not have an expiry date. It is the ninth order since October 29, 2021, to prohibit Canadians who have chosen not to receive the experimental Covid-19 vaccines from air travel.

14. Sections 17.1 to 17.9 of the Decision require all air travellers to show proof of Covid-19 vaccination to board an airplane departing from an airport in Canada that is listed in Schedule 2 of that Order, including all major airports in Canada.
15. Each of the Applicants herein have chosen not to receive the current Covid-19 vaccines.
16. In the months leading up to the issuance of the Decision, the Prime Minister of Canada made pejorative and discriminatory statements toward Canadians who have made the decision not to receive the Covid-19 vaccine including by calling them “racists”, “misogynists” and asking “[d]o we tolerate these people?”
17. On December 16, 2021, the Prime Minister wrote to the Respondent Minister of Transport expressly directing him to enforce vaccination requirements across the federally regulated transport sector, and requiring travellers on commercial flights within and departing Canada to be vaccinated.
18. The resulting Decision provides a limited number of classes of individuals that are exempt from the requirement to show proof of Covid-19 vaccinations. The Applicants have been deemed not to qualify for any of the exemptions.
19. Four vaccines are currently authorized in Canada to treat symptoms of Covid-19: AstraZeneca, Moderna, Pfizer, and Johnson & Johnson. All Covid-19 vaccines are still undergoing clinical trials, which are scheduled for completion in 2023 or later. None of these vaccines prevent the infection or transmission of Covid-19, including the Omicron variant.
20. Covid-19 vaccines, while recommended by Canadian public health authorities, are also known to cause severe adverse effects and injuries for some individuals, including serious disabilities and death. Health Canada has placed warning labels on all of the Covid-19 vaccines available in Canada for various serious conditions, including myocarditis,



pericarditis, Bell's Palsy, thrombosis, immune thrombocytopenia, and venous thromboembolism.

21. Vaccinated and unvaccinated Canadians can be infected with and transmit Covid-19. However, individuals under 60 years old without co-morbidities have an approximately 99.997% chance of recovery from Covid-19.
22. The Decision discriminates against an identifiable group of Canadians (those who have not received a Covid-19 vaccine) and does not provide exemptions for Canadians who have natural immunity to Covid-19 or those with conscientious objections.
23. The Decision's requirement for Canadians to be vaccinated to fly does not address a matter of "significant risk, direct or indirect, to aviation safety or the safety of the public" and would not prevent travellers from introducing or spreading Covid-19.

***(c) The Impact of the Decision on the Applicants***

24. Mr. Peckford relies on air travel in order to visit his family in Ontario, Newfoundland, and Nova Scotia. He also has flown to various speaking engagements across Canada since the Covid-19 pandemic began. Since he lives on Vancouver Island, travelling by car across the country is impractical and dangerous depending on weather conditions. Mr. Peckford does not have the financial means to travel across Canada in a private chartered aircraft.
25. Mr. Peckford is a healthy and active man, and fears the potential side effects of Covid-19 vaccine products after reviewing the listed potential side effects of such products by Health Canada. Further, he believes that there is too much uncertainty and risk with this medical intervention for him to give informed consent to receiving it. Mr. Peckford did not apply for a medical or religious exemption, as he objects to the use of such products in exercise of his conscience, bodily autonomy, life, liberty, and security of the person, and believes that having to disclose his vaccination status to the Respondents as a condition of boarding an airplane is a violation of his privacy. Mr. Peckford also has been segregated from other vaccinated Canadian air travellers, which renders him a second-class citizen.
26. Ms. Nikkanen relies on air travel to visit her extended family in Ontario and Alberta. She does not wish to drive to Ontario and Alberta without her husband, and together they cannot

take enough vacation time from their employment to drive to and from their families' residences to visit. She recently suffered a miscarriage and is anxious to try to become pregnant again. Ms. Nikkanen also enjoys annual winter vacations to Mexico and can only get there by airplane. Mexico does not require non-citizens or tourists to provide proof of Covid-19 vaccination to enter the country. Ms. Nikkanen does not have the financial means to travel across Canada or to Mexico in a private chartered aircraft.

27. Ms. Nikkanen is a healthy and active individual and fears the potential side effects of Covid-19 vaccine products after reviewing the listed potential side effects of such products by Health Canada. She further fears the unknown potential risks to her fertility. Ms. Nikkanen believes that there are already too many known risks and further uncertainty with this novel medical intervention for her to properly exercise informed consent. By contrast, Health Canada data and peer reviewed research shows that persons in her age bracket are of very low risk from Covid-19. She objects to the use of aborted fetuses in the Covid-19 vaccine testing phase, or otherwise in the vaccine's production. She applied for a religious exemption to Westjet Airlines which was denied. She objects to the use of such vaccines based on her religious beliefs and conscience, exercise of her bodily autonomy, life, liberty, and security of the person. Ms. Nikkanen has been segregated from vaccinated Canadian air travellers which renders her a second-class citizen.
28. Mr. Baigent completes multiple return flights annually from Ontario to Yellowknife for his employment. From July of 2020 to September of 2021 he safely flew with Westjet Airlines between the two cities ten times. As a result of the first interim order prohibiting unvaccinated people from boarding an airplane that came into effect on November 30, 2021, Mr. Baigent had to drive 5,000 kilometers of dangerous highways in extreme winter weather conditions to reunite with his family in Ontario. He will have to make the return trip in February of 2022, under the same extreme winter weather conditions. He will have to complete this journey four more times in 2022. Mr. Baigent does not have the financial means to travel to and from work in a private chartered aircraft.
29. Ms. Baigent is a healthy and active individual and fears the potential side effects of Covid-19 vaccine products after reviewing the listed potential side effects of such products by

Health Canada. Further, he believes that there is too much uncertainty and risk with this novel medical intervention, while having less concern with his ability to overcome the negative effects of Covid-19 infection in his age group. Mr. Baigent applied to the Northwest Territories Chief Public Health Officer for a religious exemption to vaccine passport restrictions in the Northwest Territories, and the exemption was approved on December 3, 2021. For his domestic commercial air travel, he submitted a request for a religious exemption from Westjet Airlines, however it was declined on December 23, 2021. The only other major commercial airline that flies between Yellowknife and Toronto is Air Canada, however they updated their website after Christmas of 2021 to indicate they will not accept or approve any religious exemptions.

30. Mr. Baigent objects to the use of the Covid-19 vaccines based on his long held and sincere religious beliefs, his conscience, the exercise of his bodily autonomy and security of the person, and that having to disclose his vaccination status to the Respondents is a violation of his privacy. Mr. Baigent also has been segregated from vaccinated Canadian air travellers which renders him a second-class citizen.
31. Mr. Belobaba needs to return to Canada from the United Kingdom so that he can attend to his home in Outlook, Saskatchewan. While he can board an airplane to Canada without showing proof of Covid-19 vaccination, he will not be able to return to the United Kingdom by airplane where his wife and children currently reside. Mr. Belobaba does not have the financial means to travel from Saskatchewan to the United Kingdom in a private chartered aircraft.
32. Ms. Belobaba is a healthy and active individual and fears the potential side effects of the Covid-19 vaccine products after reviewing the listed potential side effects of such products by Health Canada. Mr. Belobaba had Covid-19 in August 2021 and recovered. Mr. Belobaba believes that there are already too many known risks and further uncertainty with this novel medical intervention for him to properly exercise informed consent. Further, he does not fear Covid-19 because he already recovered from the disease and has natural immunity. Mr. Belobaba objects to the use of the Covid-19 vaccines based on his conscience, the exercise of his bodily autonomy, life, liberty, and security of the person, and that having to disclose his vaccination status to the Respondents is a violation of his

- privacy. Mr. Belobaba also has been segregated from vaccinated Canadian air travellers which renders him a second-class citizen.
33. Ms. Grcic is currently in South Africa with her young daughter to visit her elderly parents. She plans to return to Québec in the future to reunite with her husband but will not be able to take an airplane to visit her parents again, or to visit her extended family in Poland, Croatia, and United Kingdom, and Victoria, British Columbia. Ms. Grcic does not have the financial means to travel internationally in a private chartered aircraft.
34. Ms. Grcic is a healthy and active individual and fears the potential side effects of Covid-19 vaccine products after reviewing the listed potential side effects of such products by Health Canada. She is of childbearing age, would like to have more children, and fears the unknown potential risks of the Covid-19 vaccine products on her fertility. Ms. Grcic believes that there are already too many known risks and further uncertainty with this novel medical intervention for her to properly exercise informed consent. By contrast, Health Canada data and peer reviewed research shows that persons in her age bracket are of very low risk from Covid-19. She did not apply for a medical or religious exemption, as she objects to the use of such vaccines based on her exercise of bodily autonomy, life, liberty, and security of the person, and that having to disclose her vaccination status to the Respondents is a violation of her privacy. Ms. Grcic has been segregated from vaccinated Canadian air travellers which renders her a second-class citizen.
35. Mr. MacDonald travelled to British Columbia by air in August 2021 to attend his first year at Trinity in Langley. In choosing post-secondary institutions, he expected he could rely on air travel to visit his family in Ontario, which is approximately 4,000 km away. Driving home to Ontario would take approximately three days one-way and is not feasible with his school schedule. During his first year away, he was not able to reunite with his family for the Christmas season.
36. Mr. MacDonald is a healthy and active young man and fears the potential side effects of Covid-19 vaccine products after reviewing the listed potential side effects of such products by Health Canada. After assessing the potential risks, particularly the risk of myocarditis in young active men, he believes that there is too much uncertainty and risk with this novel

medical intervention in order for him to properly exercise his informed consent. By contrast, Health Canada data and peer reviewed research shows that persons in his age bracket are of very low risk from Covid-19. Mr. MacDonald objects to the use of the Covid-19 vaccines based on his religious beliefs, his conscience, the exercise of his bodily autonomy, life, liberty, and security of the person. Mr. MacDonald also has been segregated from vaccinated Canadian air travellers which renders him a second-class citizen.

**(d) *Interim Order 52 is ultra vires the enabling statute***

37. The Decision is *ultra vires* the authority delegated to the Minister of Transport under section 6.41(1) of the *Aeronautics Act* which restricts the Minister's order-making power to matters related to aviation safety consistent with the scope and objects of the Act. The Decision is *ultra vires* as it was made for an improper purpose, and in bad faith in furtherance of an ulterior motive to pressure Canadians into taking the Covid-19 vaccines.
38. In making the Decision, the Minister of Transportation erred in law, jurisdiction, fact and/or mixed fact and law, which errors merit judicial review of the Decision, including but not limited to:
  - a. Abusing and/or fettering his order-making discretion and authority by:
    - i. Allowing the Prime Minister to direct the contents of the Decision;
    - ii. Failing to give any or adequate consideration to highly relevant factors and giving weight to irrelevant considerations;
    - iii. Exercising his discretion unreasonably and with an ulterior motive;
    - iv. Exercising his discretion in the absence of necessary evidence or on the basis of insufficient evidence; and
  - b. Such further and other grounds as counsel may advise and this Honourable Court may allow.

(e) *Charter violations*

39. The Minister of Transport is constrained by the *Charter*, the *Constitution Act, 1982*, and the *Bill of Rights*. The Minister of Transport cannot:
- a. Deprive any individual of their rights to liberty or security, except in accordance with the principles of fundamental justice; or
  - b. Deprive any individual of their rights to freedom of conscience, liberty, privacy, and mobility, except by due process of law.
40. The Vaccine Provisions of the Decision are a violation of the Applicants' *Charter* rights:
- a. Section 2(a): freedom of religion and conscience by requiring the Applicants to take Covid-19 vaccines to travel by air which violate their religious and personal beliefs without providing a lawful policy for religious exemptions;
  - b. Section 6: right to leave the country and travel within the country for business or pleasure by prohibiting the Applicants' only means of exiting Canada or travelling long distances interprovincially in a timely and safe fashion, without submitting to an experimental medical procedure;
  - c. Section 7: life, liberty, and security of the person, by prohibiting air travel unless the Applicants receive an experimental medical procedure contrary to their will and without their fully informed consent, which violates *The Nuremberg Code (1947)*, interferes with their bodily autonomy, subjects them to the risks of harmful side effects or death, and impedes their ability to move freely across the country or internationally, all in a coercive manner that is arbitrary, overbroad, and grossly disproportionate;
    - i. The Decision and conduct of the Minister of Transport are also contrary to section 7 of the *Charter* as they unduly impair the rights of liberty and security of the person and are contrary to the principles of fundamental justice;

- ii. The Decision invokes the section 7 right to liberty and security of the person because it creates a state-imposed prohibition on air travel for those who have elected not to receive the Covid-19 vaccines prior to the completion of clinical trials. The Decision will cause a loss of liberty and security for the Applicants, who rely on air travel;
  - iii. The Applicants are deprived of their section 7 rights to life, liberty, and security of the person by state action as a result of the existence and operation of the Decision;
  - iv. This deprivation is more than trivial. The Decision restricts unvaccinated Canadians from air travel, creating a serious harmful effect that negatively impacts liberty and security of the person;
  - v. Section 7 *Charter* rights can only be infringed in accordance with the principles of fundamental justice. The principles of fundamental justice require that the impugned legislation not be grossly disproportionate, arbitrary, or overly broad; and
  - vi. The Decision does not accord with those principles of fundamental justice. In particular, there is no rational connection between the infringement of rights and what the Decision seeks to achieve, demonstrating the Decision is arbitrary and overbroad. Further, the deprivation of rights is grossly disproportionate to the objective of the Decision;
- d. Section 8: right to privacy, by forcing the Applicants to disclose private medical information to be able to board an airplane; and,
  - e. Section 15: equality rights, by discriminating and labelling the Applicants as “unvaccinated” and barring them from boarding aircraft in Canada, while permitting a “vaccinated” class of Canadians to fly from Canadian airports.
41. The Vaccine Provisions of the Decision violate the Applicants’ *Charter* rights and punish them for the lawful exercise of their fundamental constitutional rights and freedoms.

42. The Decision is not justified under section 1 of the *Charter*. The Decision is not in the public interest, is not a rational means to pursue the stated objective as there is no evidence to show that the prohibition of unvaccinated Canadians from air travel limits or reduces the spread of Covid-19. The Decision does not cause minimal impairment to the rights of the Applicants. Further, the deleterious and negative impact of the Decision is not proportional to the minimal or non-existent benefits it may have.

**(f) *Contravention of the Bill of Rights***

43. The *Bill of Rights* has among its objects the affirmation of the dignity and worth of the human person in Canadian society, and the respect for the rule of law. It is paramount to other federal legislation and regulations and is quasi-constitutional in nature. The *Aeronautics Act* and the Decision must be construed and applied as not to abrogate, abridge or infringe, or to authorize the abrogation, abridgment or infringement, of the rights and freedoms recognized and declared in the *Bill of Rights*.

44. The Decision unduly impairs the Applicants' rights to life, liberty, and security of the person, and the right not to be deprived thereof except by due process of law, as set out in section 1(a) of the *Bill of Rights*.

45. The Decision was not made by due process of law. Among other things,

- a. The Decision was not subject to legislative controls customarily applied to the introduction of a new law. As a result, Canadians did not receive the benefit of multiple readings or parliamentary debate and scrutiny;
- b. The Minister of Transport has made the Decision in an overly broad manner, without due consideration of the rights of the Applicants; and
- c. There was no, or insufficient, stakeholder engagement or consultation prior to the Decision.



**(g) Legislation, regulations, and enactments**

46. The Applicants rely on the following legislation, regulations, documents, and enactments:

- a. *Canadian Charter of Rights and Freedoms*, ss. 1, 2, 6, 7, 8, 15 and 24(1);
- b. *Constitution Act, 1982*;
- c. *Canadian Bill of Rights*, S.C. 1960, c. 44;
- d. *Federal Court Rules*, SOR/98-106;
- e. *Aeronautics Act*, R.S.C., 1985, c. A-2;
- f. *International Covenant on Civil and Political Rights*;
- g. *The Nuremberg Code (1947)*;
- h. *The International Health Regulations (2005)*;
- i. *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52*; and
- j. Such further and other authorities and legislation as counsel may advise and this Honourable Court may accept.

**This application will be supported by the following material:**

47. The following Affidavits and exhibits thereto, to be filed:

- Affidavit of The Honourable A. Brian Peckford, to be sworn;
- Affidavit of Leesha Nikkanen, to be sworn;
- Affidavit of Ken Baigent, to be sworn;
- Affidavit of Drew Belobaba, to be sworn;
- Affidavit of Natalie Grcic, to be sworn;

- Affidavit of Aedan MacDonald to be sworn; and
- Other affidavit evidence, including affidavits from experts and fact witnesses, to be filed.

48. Such further and other evidence as counsel may advise and this Honourable Court may permit.

### 3. Request for Material from the Tribunal

49. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Minister of Transport, Transport Canada, the Attorney General of Canada, and the Governor in Council provide a certified copy of the following materials that are not in the possession of the Applicants, but are in the possession of the Attorney General of Canada, to the Applicants and the Registry:

All records, including but in no way limited to research, analysis, policy papers, briefing reports, studies, proposals, presentations, reports, memos, opinions, advice, letters, emails and any other communications that were prepared, commissioned, considered or received by the Government of Canada in relation to:

- a. *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52*;
- b. All correspondence, letters, emails, and any other communications related to *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52*, between the Respondents and:
  - i. The Governor General in Council;
  - ii. The Prime Minister of Canada;
  - iii. The Privy Council Office;
  - iv. The Department of Justice;
  - v. Global Affairs Canada;

- vi. Crown Indigenous and Northern Affairs Canada;
- vii. The Provinces and Territories of Canada, including the Minister of Transport of each Province and Territory;
- viii. The elected, appointed or hereditary representatives of First Nations and Indigenous people of Canada; and
- ix. The municipalities of Canada.



January 31, 2022

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**JUSTICE CENTRE FOR CONSTITUTIONAL  
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**Solicitors for the Applicants**