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| March 07, 2022<br>07 mars 2022 |                                |                            |  |
| Jennifer Sorvisto              |                                |                            |  |
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Court File No.

FEDERAL COURT

BETWEEN:

**ANDREW ROBERT GIRARD, ALEXANDER GOSSEN, HARRY GARCIA, MARCO AUGUSTO CARREIRA, THOMAS LAMOUREUX, JULIE KERFOOT, PAUL GORDON MACDONALD, DAVID MONTAGNON, CHAD REXER, SEAN BRIAN WILLIAM HOWE, JAMIE TATE LINN, DEVON BROOKS, MICHAEL BROWN, AARON RUHL, ANDREW TIGHE, THOMAS ALEXANDRE JOSEPH POIRIER, MARC DANIEL PARADIS, JOHN ARTHUR GARY GEORGE SKEOCH, RYLEE JON GUDNASON STEVENS, SHELDON BENEDICTSON, TREVOR J HALLETT, BRETT JERRY GAUDRY, DON WERSCHLER, MARK BAKER, BRAEDEN ADAMS, DARRYL REID, LANCE KENYON, JOHN KARKARIS, ORRIE MYLES ANDERSON, CHRISTOPHER DANIELS ANDREWS, CAMERON JOSEPH EDWARDS, DEREK ESKOWICH, BRENT TIMOTHY MARTIN, PAUL DEVARENNE, BRODIE MELNYCHUK, NIKOLAS JAMES MALONEY, DANIEL PURPUR, RYAN HRYNIW, ADAM HELFRINCH, MARTIN JOHN GOGELA, EJAZ ALEKOZAI, JEREMY STEPHENSON, BRYAN MATTHEW MCHUGH, RYAN EDGE, NOAH STEELE, TULLY HARTL, SPENCER STEVENS, ANDREW NJUME, MATTHEW HICKS, LISA SCHMIDTKE, CHRISTOPHER LOCKE, JEFFERY DEVINE, DAWOOD K HAIDER, JARED SCOTT MAYHEW, TYRRELL HIATT, SHAWN BASKETTE, GEORGE COSTA, BRIAN DESROSIERS, KYLE WILLIAM ROSS PILON, KYLE DANIEL MICHAEL KORTKO, SHANE THOMAS STONE, ANTHONY FIORINO BIN, JESSE RANDALL BLOOM, COLIN STAN PORTICE, RYAN CHARLES THIESSEN, TIMOTHY HAY, MATTHEW BLANC, DAVID MICHAEL BREDIN, RUSSELL THOMAS HENDERSON, STEVEN KOENIG, THOMAS MARTIN SAVORN, JAMES WELCH, CINDY STEVENSON, JON MCALLISTER, MICHAEL DAVID SERBEN, JACK EBIN THOMAS SAVORN, CHARLES MILLER, MILAN MITIC, ROBERT DESROSIERS, MATTHEW CARTER-BARR, WILLIAM CHESTER JOSLIN, COLBY COCHRANE, TRAVIS SCHALLOCK, ANDREW MULHERIN-CARON, CHRISTIAN THOMAS JONES, GEORGE ZINDROS, JEFFREY WYCHOPEN, GLEN SAINAS, RYAN DONER, KYLE WICKSTROM, SLATE PODAIMA, COLEMAN MITCHELL, ERNEST GEORGESON, DALLON DAVID EDMONDSON, AARON SWAN, SARA LOVEGROVE, SAMUEL LEGERE, CLAUDIO CARACCILO, RACINE MARIE STONE, STEVE STOPA, CLAUDIA LAPOLLA, KELLY ROBERT HIGGINS, TED AMEAR KIRYAKOS, ALAN TODD RUDDERHAM, SAMANTHA OLSEN, CHANDRA MARIE GILLIES, LANCE LESLIE WILLIAMS, LIONEL BROWN RICHARDO, JOHN THOMAS CRODEN, CHARLES ANTHONY DICKSON, MICHAEL CASTILLO, MICHAEL CERULLI, KARIM LOWEN, SHAWN SILVARI, JUSTIN DADINA, MARCEL LEONARD BEDARD, DWAYNE SOBERS, JESSE ALLISON, NICOLAS LICOIS, CLAYTON PAPP, DOUGLAS BRYAN, DEREK JAMES CHARLES WATERHOUSE, JAMIE CAMERON HALL, DAYLE JONES, KENTON HILDEBRAND, DEVANANTH VICTOR SELVAM, MATTHEW BRITTON, JESSICA ERIN ASLIN, ALIE KRAAYENBRINK, NANCY JEAN WARD, ERIC BEAULIEU, REJEAN DONALD JOSEPH SAWCHUK, DARYL CHAMBERS, RAPHAEL DESCHENES, JAMES LEE KERR, EUGENE JEFFREY MACKAY, BRETT KYLE HUNT, DERRICK WOODALL, TROY STRANDBERG, BILLY NEUMANN, RONALD MARK KELLY, SUZANNE MARIE BATTICK, NATHAN HUGH BOHMER, TYLER BYRNES, ROBERT STUVE, JASON FLOYD FREDRICKSON, KATHY PIETERSMA, BRAD PALEY, CHANTEL TARA KOETZLE, PARTICK PAQUET, DENISE FINK, NATHAN ROBERT VEINOT, KYLE GEORGE KING, DOMENIO RICCI, CATHLEEN ALICE PESSERL, STEPHEN EDWARD GLADISH, REMY FAST, ROBERT KOETSIER, BRETT HERBERT, COREY ADAM ARSENAULT, JAZMINE STADNYK, RAYMOND LUNN, CAMERON JAMES SMITH, MYLES GOZDA, DAVID CAMERON WENSLEY, ANDREW PAUL STEWART, MICHAEL MARUSHY, NATHAN GOY, RICHARD MICHAEL, RYAN GILBY, DEAN GRYWACHESKI, DORIN HALMAGHI, MICHAEL VALLINS,**

NICOLE LABOUCAN, JAMES BULLOUGH, WALTER FERLEYKO, JOCELYN VALERIA YANEZ, TRISTAN JENKIN, SEAN FIORILLO, ERIC MORKEBERG, NATHANIEL PHILIPPOT, JUSTIN DADINA, CHAMREIYANG KAMEI, SHENDY GINGRAS, JEFFREY THOMAS BURT, JAMES FREDERICK BETTS, DALE SAWA, ALEXANDER BLOKZYL, ANDREW BLOKZYL, CLAYTON EDWARD MOFFAT, AARON TANK, JOHN ROBERT MANSEAU, SEBASTIEN TRITZ, COOPER AUSTIN BAILEY SHAW, DAVID WEBSTER, KATERINA D'AMOURS, ANDREW STEPHEN KOETZLE, ANTHONY FEDERICO, BYRON SABORIO, ADAM ALEXANDER EALEY, JOSEPH GUY CRISTIAN DUFOUR, ARGENTINA CORPENO, KEITH STOWE, TIM SCORY and CAROLINE ROBILLARD

Plaintiffs

and

**THE MINISTER OF TRANSPORT, HER MAJESTY THE QUEEN IN RIGHT OF CANADA, ATTORNEY GENERAL OF CANADA, DIRECTOR GENERAL RAIL SAFETY, and CANADIAN NATIONAL RAILWAY**

Defendants

### **STATEMENT OF CLAIM**

TO THE DEFENDANT:

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

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

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

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

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

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

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

Date: \_\_\_\_\_

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

Address of local office: Edmonton Registry Office  
Scotia Place  
10060 Jasper Avenue  
Tower 1, Suite 530  
Edmonton, Alberta T5J 3R8

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

TO: THE ATTORNEY GENERAL OF CANADA  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

TO: THE MINISTER OF TRANSPORT  
Transport Canada  
330 Sparks St  
Ottawa, Ontario K1A 0N5

TO: DIRECTOR GENERAL, RAIL SAFETY  
Michael DeJong – Director General, Rail Safety for Transport Canada  
Transport Canada  
330 Sparks St  
Ottawa, Ontario K1A 0N5

TO: CANADIAN NATIONAL RAILWAY  
CN Headquarters  
Montreal (Headquarters)  
935 de La Gauchetière Street West  
Montreal, Quebec H3B 2M9

## CLAIM

### A. RELIEF SOUGHT BY THE PLAINTIFFS

1. The Plaintiffs claim:

- a. A Declaration pursuant to section 24(1) of the *Constitution Act, 1982* that section B, paragraphs 1, 2, 3, 7, and 8 of *Order pursuant to Section 32.01 of the Railway Safety Act (MO 21-07.2) Vaccination Mandate for Employees* (the “**Order**”) that requires a railway company to develop and implement a company-wide vaccination policy for all employees to attest as to their COVID-19 vaccination status with leave without pay, or termination of compensation, as the minimum sanction (the “**Vaccine Provisions**”) and Canadian National Railway Company’s (“CN”) subsequent “Canadian National Railway Company Mandatory COVID-19 Vaccination Policy – Canada” (the “**Policy**”) that implements these Vaccine Provisions violates sections 2(a), 7, 8, and 15 of the Plaintiffs’ constitutional rights and freedoms protected by *the Canadian Charter of Rights and Freedoms* (the “*Charter*”), as set out below, and that these violations are not demonstrably justified under section 1 of the *Charter*;
- b. Damages for violation of the Plaintiffs’ rights pursuant to sections 2(a), 7, 8, and 15 of the *Charter* in the amount of \$500,000.00 per Plaintiff;
- c. Punitive and exemplary damages in the amount of \$500,000.00 per Plaintiff;
- d. Prejudgment and post judgment interest pursuant to the *Federal Courts Rules*, as amended;
- e. Costs on a full indemnity scale plus any applicable taxes; and
- f. Such further and other relief as this Honourable Court may permit.

### B. DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- a. “**Employment Insurance Benefits**” (“EI Benefits”) means those benefits established under the *Employment Insurance Act*, SC 1996, c 23;
- b. “**Partially Vaccinated**” means having received the first dose of a two-dose series of a Health Canada approved vaccine that provides protection against COVID-19.
- c. “**Fully Vaccinated**” means having received the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19, and having allowed the time recommended by public health authorities to

produce an immune response to COVID-19 elapse (14 days from receipt of a single-dose vaccine or of the second dose of a two-dose series). In time, being Fully Vaccinated may mean having received booster shots, when and as recommended by the applicable public health authorities.

- d. **“Proof of Vaccination”** means providing to CN official documentation issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered (including a QR code, if issued by the applicable authorities) confirming receipt of the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19. In time, this may require providing proof of receipt of booster shots, when and as recommended by the applicable public health authorities.

## C. OVERVIEW OF THE ACTION

### The Plaintiffs

3. All of the Plaintiffs are Employees of CN and subject to the Policy.
4. The majority of the Plaintiffs are neither Partially or Fully Vaccinated against COVID-19. The Plaintiffs oppose being Partially Vaccinated or Fully Vaccinated (collectively known as **“Vaccinated”**) for COVID-19 for reasons which vary, as described below.
5. The Plaintiffs all oppose being required to attest to their medical records regarding the COVID-19 vaccination as a condition of their employment.
6. The Plaintiffs all oppose vaccination absent informed consent and oppose disclosure of their private health information about their COVID-19 vaccination status to CN under the threat of administrative and/or disciplinary measures ranging from unpaid leave to termination of employment.
7. Certain Plaintiffs exercise their work functions remotely, while the remainder do so in person.
8. Certain Plaintiffs perform their work outside or in close proximity to only a few colleagues.
9. Certain Plaintiffs are unionized under one of the following unions:
  - a. Unifor;
  - b. Teamsters Canada Rail Conference;
  - c. The United Steelworkers Union, Local 2004; and
  - d. International Brotherhood of Electrical Workers System Council No. 11.

10. The remaining Plaintiffs are non-unionized employees.

### **The Defendants**

11. The Defendants are:

- a. The Honourable Omar Alghabra, Minister of Transport (the “**Minister**”);
- b. 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**”);
- c. Michael DeJong, Director General, Rail Safety (the “**Director**”); and
- d. Canadian National Railway (“**CN**”).

12. The Defendant Minister is granted power under the *Railway Safety Act*, that “[i]f the Minister considers it necessary in the interests of safe railway operations, the Minister may, by order sent to a company, ... require the company, ... to stop any activity that might constitute a threat to safe railway operations or to follow the procedures or take the corrective measures specified in the order, including constructing, altering, operating or maintaining a railway work.” This provision is the legal authority for the Order; it is not specific to requiring knowing the medical records of employees.

13. The Minister allegedly delegated this power to the Director pursuant to section 36 of the *Railway Safety Act* to create the Order. Subsequently, the Director created the Order.

14. CN is a railway company. CN has approximately 24,000 railroaders that transport more than C\$250 billion worth of goods annually for a wide range of business sectors across a rail network of approximately 20,000 route-miles spanning Canada and mid-America.

15. CN is listed in Appendix A in the Order as a railway company to which the Order applies.

### **The Policy**

16. On 15 January 2022, the Defendant Director issued the Order pursuant to sections 32.01 and 36 of the *Railway Safety Act*.

17. The Order came into effect on 15 January 2022 and remains in effect until it is revoked by the Minister. It does not have an expiry date. It is the third such order since 29 October 2021 to mandate that the specified list of railway companies implement a company wide vaccination policy.

18. Section B: Company-Wide Vaccination Policy of the Order requires railway companies, listed in Appendix A of the Order, to implement a company-wide vaccination policy that all employees must disclose their COVID-19 vaccination status.

19. The Plaintiffs all oppose the blanket Policy requirement to reveal their medical records and say that being forced to provide medical information as a condition of employment is discriminatory.
20. In the months leading up to the issuance of the Order, the Prime Minister of Canada (“PM”) made pejorative and discriminatory statements toward Canadians who made the decision not to receive the COVID-19 vaccine by calling them “racists”, “misogynists” and asking “[d]o we tolerate these people?”
21. On 16 December 2021, the PM wrote to the Minister, expressly directing that his “immediate priority is to enforce vaccination requirements across the federally-regulated transport sector that are in place”.
22. Section B, paragraph 7 of the Order states: “A railway company must maintain records that include the name and position of every employee, their location of employment, their vaccination status, whether they are subject to an exemption and, if so, the reason for the exception.” This requires every Plaintiff to disclose their COVID-19 vaccination status to CN.
23. 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 until 2023 or later. None of these vaccines prevent the infection or transmission of COVID-19, or any of its variants.
24. These vaccines are experimental. Long-term effects have not yet been sufficiently studied and there are significant risks. These vaccines have not undergone the same stringent scientific approval process by Health Canada as have previous vaccines and medications. The vaccines could cause other side effects that remain unknown at this time due to their relatively recent development. No one can be certain about the long-term effects of a vaccine that has not been in existence for the long term and has not been studied over a span of years.
25. The COVID-19 vaccines recommended by Canadian public health authorities, are also known to cause severe adverse effects and injuries for some individuals. Health Canada has warned about various serious reactions from the COVID-19 vaccinations, including myocarditis, pericarditis, Bell’s Palsy, thrombosis, immune thrombocytopenia, and venous thromboembolism.
26. Vaccinated and unvaccinated Canadians can be infected with and transmit COVID-19. The vaccines do not provide full immunity to COVID-19 or its known variants. They merely claim to provide some “benefits” or “protection” that in certain circumstances at best lessens severity of symptoms or potentially reduces the risk of hospitalization. The “benefits” or “protection” of the vaccines vary depending on numerous factors that are still being observed and studied, including any underlying health conditions, the individual’s age, and when the vaccine was administered in relation to any variant of concern.

27. The Policy states:

“CN is committed to taking every reasonable precaution for the protection of the health and safety of its employees, business partners and clients from COVID-19. On October 29, 2021, the Minister of Transport made an Order requiring all employees of federally regulated railways in Canada to have at least one dose of a COVID-19 vaccine before November 15, 2021 and be fully vaccinated before January 24, 2022. This policy provides for the full vaccination of all CN employees in Canada, with the exception of those who have received medical or religious exemptions.”

28. The Policy provides for limited exemptions and accommodation, which are namely “medical contraindications and for sincerely-held religious beliefs”. The vast majority of the Plaintiffs applied for an exemption; all of them were denied an exemption. Asking for an exemption also discriminates, as the individual is forced to disclose personal information.

29. The Policy 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 or for those working remotely or with little to no contact with other colleagues.

30. At Section E. Vaccination Requirements and Timeline, the Policy discriminates by mandating that all employees attest to their medical status regarding the COVID-19 vaccine. Those who do not were put on leave without pay and threatened termination. This discriminates against an identifiable group based upon medical records.

31. As Employees of CN, the Plaintiffs are subject to the Policy, which requires that they be Fully Vaccinated against COVID-19 as defined above and that they disclose their vaccination status to CN by way of an attestation via the CN Vaccine Tracker or through [OHS\\_vaccination@cn.ca](mailto:OHS_vaccination@cn.ca).

32. Pursuant to section E “Vaccination Requirements and Timeline” and section J “Non-Compliance with the Policy” of the Policy, as of 15 November 2021, the Plaintiffs were placed on an unpaid leave of absence. The Policy requires an attestation of a medical record.

33. The Policy does not allow mandatory COVID-19 testing to be implemented as an appropriate alternative to the COVID-19 vaccination for those who do not consent to vaccination or who do not consent to providing their vaccination record to their employer. Between 15 November 2021 to 24 January 2022, employees were allowed to continue working and use testing as an alternative, only if they received their first dose of vaccine before 15 November 2021, and intended to get their second dose by no later than 24 January 2022.

34. Section I of the Policy recognizes that “[w]here a CN employee’s circumstances satisfy the criteria for an exemption, resulting reasonable accommodations will be explored



and granted up to the point of undue hardship in accordance with applicable Human Rights legislation”

35. The Policy indicates that mandatory COVID-19 testing is a satisfactory means of maintaining the health and safety of employees in the workplace. The Policy discriminates against those who do not consent to the vaccination or who do not consent to providing their vaccination record to their employer, effectively forcing these individuals to consent to a medical treatment they cannot accept or risk losing their employment.
36. The Plaintiffs were initially placed on Leave Without Pay until 24 January 2022. On 10 January 2022, the Plaintiffs received notice that they were being placed on Leave Without Pay for an indeterminate period of time.
37. On 15 October 2021, Employment and Social Development Canada (“ESDC”) announced new codes for the Record of Employment (“ROE”) relating to the termination of employees in relation to COVID-19.
38. The ESDC’s announcement demands that employers who terminate an employee because of failure to comply with a mandatory COVID-19 vaccination policy are to indicate **code M** (dismissal) on that employee’s ROE, disqualifying them from eligibility.
39. The ESDC website has been further updated to advise potential claimants that “[i]n most cases, if you lose or quit your job because you didn’t comply with your employer’s mandatory COVID-19 vaccination policy, you won’t be eligible for EI regular benefits.”
40. The ESDC website states:

When the employee doesn’t report to work because they refuse to comply with your mandatory COVID-19 vaccination policy, use **code E (quit)** or **code N (leave of absence)**.

When you suspend or terminate an employee for not complying with your mandatory COVID-19 vaccination policy, use **code M (dismissal or suspension)**.

If you use these codes, we may contact you to determine:

- if you had adopted and clearly communicated to all employees a mandatory COVID-19 vaccination policy
- if the employees were informed that failure to comply with the policy would result in loss of employment
- if the application of the policy to the employee was reasonable within the workplace context
- if there were any exemptions for refusing to comply with the policy

41. The ESDC uses the facts provided by the employer and the terminated employee to determine if the employee will be entitled to EI Benefits, which they will likely not be, by the ESDC's own admission.
42. The Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, stated in a CBC Radio interview on 21 October 2021 that Employees who do not comply with the Policy will be ineligible for EI Benefits, stating that if getting vaccinated is "a condition of employment that hasn't been met and the employer [is] choosing to terminate someone for that reason, [then that] would make that person ineligible for EI".
43. As of 15 November 2021, the Plaintiffs all lost their sole or primary source of income and were rendered ineligible for EI Benefits.
44. The Policy is not expressly or implicitly, directly or indirectly part of any collective agreement between the Plaintiffs' Employer and the Plaintiffs' unions.
45. The subject matter of this Statement of Claim is not directly nor indirectly, expressly nor tacitly, addressed or provided for in any collective agreement between the unionized Plaintiffs and their respective unions and the Defendants.
46. The dispute raised of this Statement of Claim is not a dispute within the meaning of the Plaintiffs' collective agreements.
47. No grievance, arbitration nor adjudication procedure provided for in the Plaintiffs' respective collective agreements or any applicable law applies to the present issue.
48. Consequently, no arbitrator or adjudicator or board has exclusive jurisdiction over the issues raised in the present Statement of Claim.
49. The policies relating to mandatory COVID-19 vaccination for the Employees and their potential to obtain EI Benefits if terminated are rapidly evolving.

### **Charter Violations**

50. The Plaintiffs say that their *Charter* right to freedom of conscience protected under section 2(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this offends their conscientiously held beliefs in a matter that is more than trivial or substantial.
51. The Plaintiffs say that their *Charter* right to freedom of religion as protected under section 2(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this offends their sincerely held religious beliefs in a manner that is more than trivial or substantial.
52. The Plaintiffs say that their right to life interest as protected under section 7 of the *Charter* is violated by the Order and the Policy requiring attestation of being

Vaccinated with Proof of Vaccination as it is state action imposing an increased risk of death not in accordance with the fundamental principles of justice.

53. The Plaintiffs say that their right to liberty under section 7 of the *Charter* is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this interferes with the protected sphere of personal autonomy involving private choices and the right to refuse medical treatment. The Order and Policy are state interference that are not in accordance with the principles of fundamental justice.
54. The Plaintiffs say that their right to security of the person interest protected under section 7 of the *Charter* is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this interferes with personal autonomy, and one's ability to control their own physical or psychological integrity. Such state action that seriously impairs their physical health and has caused severe psychological harm that is not in accordance with the principles of fundamental justice. It has also caused the deprivation of economic rights fundamental to human survival that are not in accordance with the principles of fundamental justice.
55. The Plaintiffs say that their privacy rights protected by sections 7 and 8 are violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as they require the disclosure of personal medical information.
56. The Plaintiffs claim discrimination, in violation of equality rights under section 15 of the *Charter* by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination. Being forced to either attest or be put on unpaid leave of absence under the threat of discipline or termination is discrimination based on medical status.
57. The Plaintiffs say that the Order and the Policy is a form of state control and state sanction for exercising their *Charter* rights, by suspending them without pay as of 15 November 2021 and depriving them of any EI Benefits.
58. The Order and subsequent Policy violate the Plaintiffs' *Charter* rights and punish them for the lawful exercise of their fundamental constitutional rights and freedoms.
59. The Order and Policy are not demonstrably justified under section 1 of the *Charter*. They are not in the public interest, nor a rational means to pursue the stated objective as there is no evidence to show that terminating the employment of those who do not attest to being vaccinated reduces the spread of COVID-19. Neither the Order nor the Policy cause minimal impairment to the rights of the Plaintiffs. Further, the deleterious and negative impacts of the Order and the Policy are disproportionate to the minimal or non-existent benefits they may have.

#### **D. CHARTER VIOLATION DAMAGES AND AGGRAVATED, PUNITIVE AND "BAD FAITH" DAMAGES**

60. The Plaintiffs have suffered significant mental anguish as a result of the rapidly evolving situation. They are left to contemplate whether or not they will have the funds

available to meet their basic needs, including the purchase of food, clothing, and shelter for themselves and their families.

61. The Plaintiffs claim punitive damages for the prejudice suffered by them and their families as a result of the implementation of the Policy, which is discriminatory. The Plaintiffs reserve their rights to amend the amounts claimed for punitive damages to account for future economic losses, including but not limited to loss of income due to suspension or dismissal as a result of their refusal to comply with the Policy.
62. In addition to damages for Charter violations, the Defendants are liable for further aggravated and punitive damages stemming from the unduly harsh, insensitive manner in which it carried out the termination (*Honda Canada Inc v Keays*, [2008] 2 SCR 362).
63. The Plaintiffs have suffered measurable damages, including mental distress, anxiety, and, in particular, injury to dignity and self-respect. The Plaintiffs are therefore entitled to significant damages due to the manner in which CN terminated their employment, including a claim for punitive aggravated damages arising from flagrant human rights and *Charter* violations.
64. Scientific data shows that the COVID-19 virus poses no serious health risk to 99.97% of Canadians, and that nearly all deaths directly attributable to the virus occur in persons over 80 years of age suffering from multiple co-morbidities and compromised immune systems. Such persons are not part of the Canadian workforce. The risk of serious illness or death to persons under the age of 60, which includes the majority of the Plaintiffs, remains vanishingly low.
65. The best scientific data available shows that there is but a 0.7% risk of asymptomatic spread of the COVID-19 virus—even among persons living in the same household.
66. There is no scientific data to support the conclusion that the COVID-19 vaccines have had any impact upon reducing the spread of the virus. In fact, Israel is the most universally vaccinated nation in the world, and yet is experiencing a huge spike in new cases.
67. There are many reasonable and practical alternatives to mandatory vaccination that are more effective at controlling the spread of the virus among CN employees, all of which are far less prejudicial than summary termination of loyal employees exercising their human right and civil liberty to not attest as to their medical record status regarding the COVID-19 vaccination.
68. The collection of vaccine status is not confidential. When an employee is placed on unpaid leave, their status is immediately apparent.
69. As a result of these breaches, the Plaintiffs have each suffered the following damages:
  - a. Severe and permanent psychological, physical and emotional trauma;

- b. Loss of employment opportunities;
- c. Worsening physical health because of inadequate medical support;
- d. Threats and assaults;
- e. Loss of sleep;
- f. Loss of trust in others;
- g. Loss of self-confidence;
- h. Loss of income;
- i. Loss of opportunity for future income;
- j. Post-traumatic stress disorder; and
- k. Other such damages as will be proven at the trial of this action.

70. The Defendants actively, knowingly, and willfully participated in harming the Plaintiffs. The Defendants' conduct was high handed and improper.

71. The Plaintiffs seek all of their common law and or statutory entitlements.

72. The Plaintiffs seek the following:

- a. Damages for violation of the Plaintiffs' rights pursuant to sections 2(a), 7, 8, and 15 of the *Charter* in the amount of \$500,000.00 per Plaintiff;
- b. Punitive and exemplary damages in the amount of \$500,000.00 per Plaintiff; and
- c. Such further and other authorities and legislation as counsel may advise and this Honourable Court may accept.

73. The Plaintiffs plead and rely upon the following:

- a. *Federal Courts Act*, RSC 1985, c F-7;
- b. *Federal Courts Rules*, SOR/98-106;
- c. *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK);
- d. *Constitution Act, 1982*, s. 35(1), being Schedule B to the *Canada Act, 1982* (UK) c 11;
- e. *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, s 91(24);

- f. Order pursuant to Section 32.01 of the Railway Safety Act (MO 21-07.2) Vaccination Mandate for Employees; and
- g. Canadian National Railway Company Mandatory COVID-19 Vaccination Policy – Canada.

The Plaintiff proposes that this action be tried at Edmonton, Alberta.

4 March 2022



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