Federal Court  Cour fédérale

Date: 20211202

Docket: T-1765-21

Citation: 2021 FC 1341

Ottawa, Ontario, December 2, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ADAM WOJDAN, ALANA MATHESON, ALEXANDER NEVIN HOBBS, ALEXANDRA BODE, ALEXANDRA JANE HARRISON, ALICIA DIAZ DE LA SERNA, ALLAN EMMETT NOLAN, AMANDA JOANNE WELLS, ANA LUCIC, ANA POTAKIS, ANASTASIA DALY, ANDREA B. MILLER, ANDREEA LIVIA MODREA, ANDRÉE-FRANCE PAGÉ, ANGELA NATHALIE GUENTERT, ANIK MARIE-LOU ARAND, ANNA DOROTA YAARY, ANNA MAGDALENA RATAJCZAK, ASHLEY GAIL BRUNET, AUDREY GENEVIEVE LACASSE, AUTUMN MARIE CARDY, BARBARA ANN BERGSMA, BELINDA KATO, BIANCA BOUCHER, BRANDON BRUCE LEO SMITH, BRANDON JAY MERRILL, BRENT R EPPS, CALVIN BEDROS, CALVIN JOHN KOTOWICH, CARL THIESSEN, CARLY VIOLA LARSEN, CAROL-ANN MARY DODD, CAROLEE ANNE STEWART, CATALINA MIHAI OBREJA, CATALIN CAZAN-MACISANU, CATALINE SOLOMAN, CHAD MICHAEL GAGNON, CHARLES-PHILIPPE SAJOUS, CHRISTIAN FESTEJO, CHRISTIAN JOSEPH ANDRÉ GAGNÉ, CHRISTINE SERBAN, CHRISTINE SUSAN GRAY HUTCHINS, CHRISTINE SYLVIA DANIS, CHRISTOPH PHILIPPE DAUDIN, CHYLOW NADINE HALL, CINDY MILDRED DERAICHE, CLAIRE BRETON-PACHLA, COREY GERALD JOSEPH GAUTHIER, COREY JOHN CHARLES CRABTREE, CORY LALONDE, CRAIG STUART MCGUIGAN, DAISY-IVY BODE, DANA TOMA, DANIEL EMANUEL ANINOIU , DANIEL GEORGE GERALD KRAUTER, DANIEL LIONEL GASTON GIROUX, DANIEL NATHAN BUDD, DANIEL WILLIAM ADSHADE, DANNY ALLEN EDWARD HONE, DAVID JOHN DEMPSTER, DAVID MCNICOLL, DEAN ALLAN LEROY DAVIS, DEANNA GETZ, DEBBIE LYNN PREVOST, DENIS LECOMPTE, DENISE GABRIELLA NICOLE RAMSANKAR, DERRICK ANTHONY BELL, DÉSIRÉE-LYNN ROCHON, DHEEPA MURTHY, DIANNE EVERLYNE MARIE FLYNN, DONEEN COXE, DONNA JUNE STAINFIELD, EDMUND MCLAUGHLIN, ELAINE J. HEYINK, ELENA PALMIERI, ELIZABETH JOSEPHINE DROCHOLL, EMILIE

GABRIELLE CYR, FARRAH ESPERA, FILIPPAS LAVIDAS, FRANCE RENÉE PARADIS, FRANCIS EMOND, FRANCK ARMEL DIEDRO, FRANK MOURA RODRIGUES, GAËL BRASSARD, GIUSEPPE SALERA, GIUSEPPINA TRAPANI, GORDON WILLIAM HILL, GREGORY J D DALE, HAMID NAGHDIAN-VISHTEH, HANNA "JOHN" GEBARA, HEIDI SCHENKEWITZ, HOLLY ANN JEFFERD, IKECHUKWU PRECIOUS ARUNGWA, JACOB ALLEN ELLIOTT, JACQUELYN ANN STEVENSON, JADE BERGERON, JAMES EDISON JOHN SNIVELY, JASBIR SINGH KAILA, JAY CHRISTOPHER SINHA, JEFFERY LADOUCEUR, JENNIFER ANN THIESSEN, JENNIFER LYNN MCKEOWN, JENNIFER LYNNE STANNARD, JENNIFER MARIE JUST, JÉRÉMY BENOIT, JESSICA LEIGH WADDELL, JILI LI, JOHANNE LAROCHE, JOHN DONALD MARSHALL JR., JONATHAN CHARLES SERGIUS MANKOW, JONATHAN DAVID GIROUX, JONATHAN TASKER, JOSÉE SIVRE, JOSEPH BREFNI WARREN MACDONALD, JOSHUA NATHANIEL TORTORICI, JULIE BLOUIN, JULIE DIANE SOOK HARN MA, JULIE DONNA MOUNCE COMBER, KALIN KOSTADINOV STOYANOV, KARINE MARIE ELIZABETH GÉLINAS, KATHLEEN BRIDGET MULHOLLAND, KELLY ANNE GRENIER, KELSEY WARNOCK, KERSTIN SYKES, KEVIN LYSIUS CÔTÉ, KHRISTEN VASSEUR, KIMBERLEY ANN GIROUX, KIMBERLY NATASHA JOY LANE, KIMBERLY ANNE LISSEL, KIRSTEN PATRICIA HALL, KRISTEN ALEXANDRA SOO, KRISTINE GRAVELLE, KYLE ROYCE STUPPLE, LANCE AARON STUART DIXON, LAURA PALMA HECIMOVIC, LAURA SUZANNE YKEMA, LILLIAM SCHULZ BECHARA, LINDA BENKAIOUCHE, LINDSAY VIRGINIA DAGENAIS, LISA JANE LAWR, LLOYD WILLIAM SWANSON, LOU ANN F. GOVEAS, LUC LAFLEUR, LUCAS BRETT REID, LUKE BEDROS-ZAVODNI, LYANE Y. GIROUX, LYNE JOSEE SURETTE, MANON TREMBLAY, MARC HENRY DOMINIQUE, MARIE BETHIE THIMOT, MARIE CLAIRE SONIA CARIGNAN, MARIE GENEVIEVE PIERRETTE BERGERON, MARIE NICOLE DOROTHÉE LISE HOUDE, MARIE-CLAUDE PAGÉ, MARIE-FRANCE LADOUCEUR, MARILYN DUFRESNE, MARK LAVAL JAEKL, MARTINE JOSEPH, MARVIN ROLANDO CASTILLO, MARY DEANNA THOMPSON, MARY ELLEN RENAUT, MARY NATALIE DAWN VELLENDA, MARY-ANN HUE, MATHIEU LEMAY, MATTHEW BRADEN CAPELL, MÉLISSA HÉLENE GAUTIER, MELISSA SHARON COOPER, MELISSA SUZANNE MARTIN, MERIEM MOKAIRITA-LAMSSAHHAL MELISSA RICCIARDELLI, MICHAEL ALBERT FALCONE, MICHAEL DOUGLAS ANDERSON, MICHAEL ERIC LLOYD, MICHAEL STEVEN GENDRON, MICHAEL THEODORE SHOSTAK, MICHAL WALCZAK, MICHELLE LALANDE, MONA ABRAHAM KIAME, MONIQUE BRUYERE, MORGAN ANDREW WATTS, NADINE KASPICK, NANCY ANN DUNPHY, NATASHA MARIE BUDY, NATHALIE LACROIX, NICHOLAS GUENETTE, NICQUES MWILAMBWE YUMBA, OLIVIA LOUISE

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Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicants are employees of the Government of Canada and members of the core public administration. They seek an interlocutory injunction staying the operation of the "Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police" [Vaccination Policy], issued by the Treasury Board of Canada on October 6, 2021, pending final determination of their application for judicial review.

[2] The Applicants refuse to be vaccinated against COVID-19 for reasons that vary. They say their rights at common law and pursuant to the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter] are infringed by the Vaccination Policy in a manner that cannot be justified under s 1.

[3] The Vaccination Policy requires the Applicants to be fully vaccinated against COVID-19 and to disclose their vaccination status to their employers. The Applicants say they have been, or will be, placed on administrative leave without pay pursuant to s 7.1.2.2. of the Vaccination Policy due to their failure to submit their attestations by the prescribed deadline.

[4] The Applicants acknowledge that s 4.1.8.2 of the Vaccination Policy permits mandatory COVID-19 testing as an alternative to vaccination for those who are "unable to be fully vaccinated based on a certified medical contraindication, religion, or another prohibited ground of discrimination as defined under the *Canadian Human Rights Act*, which could also include employees who are partially vaccinated". However, the Vaccination Policy does not permit

mandatory testing as an alternative for those who do not wish to be vaccinated, or who do not consent to disclosing their vaccination status to their employers.

[5] Employer-employee relationships in the federal public service are governed by collective agreements and federal legislation. Where Parliament has created a comprehensive scheme for dealing with labour disputes, the dispute resolution process contained in the legislation should not be jeopardized by permitting routine access to the courts. Accordingly, courts should generally decline to exercise their discretion to hear employment-related disputes, even when they do have jurisdiction.

[6] The Applicants have not demonstrated that this Court should exercise any residual discretion it may have to stay the operation of the Vaccination Policy for all members of the core public administration, or for the Applicants individually. Nor have they demonstrated that they will suffer irreparable harm if an injunction is not granted. The injunction must therefore be refused on the grounds that the Applicants have not met the criteria of establishing a serious issue to be tried or irreparable harm.

II. Procedural Background

[7] On November 11, 2021, the Applicants commenced an action (Court File No T-1704-21) for substantially the same relief as they seek in the present application, coupled with monetary damages. They also sought interim and interlocutory injunctive relief.

[8] By Order dated November 16, 2021, this Court ruled that injunctive relief against a federal board, commission or other tribunal is available only by application for judicial review, not by action (*Wojdan v Canada*, 2021 FC 1244). This Court also held that the motion for interim injunctive relief was not timely, and likely barred by s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [FPSLRA]. The motion for interim injunctive relief was therefore dismissed.

[9] On November 17, 2021, the Applicants commenced the present application for judicial review, together with a motion for an interlocutory injunction staying the operation of the Vaccination Policy for all members of the core public administration pending final determination of the application.

III. Issue

[10] The sole issue raised by this motion is whether the Applicants' motion for an interlocutory injunction should be granted.

IV. Analysis

[11] An interlocutory injunction is an extraordinary form of equitable relief. An applicant must establish that: (i) there is a serious issue to be tried, (ii) the applicant will suffer irreparable harm if the stay is not granted, and (iii) the balance of convenience favours the applicant (*RJR*-

MacDonald Inc v Canada (Attorney General), [1994] 1 SCR 311 at page 334 [*RJR-MacDonald*]). An applicant must satisfy each branch of the test.

A. *Serious Issue*

[12] The test for establishing a serious issue to be tried is generally low. The issue must be neither frivolous nor vexatious. However, where granting the interlocutory relief is tantamount to granting the relief sought in the underlying proceeding, the test is more onerous. The Court must undertake a more extensive review of the merits, and be satisfied that the applicant is likely to prevail (*RJR-MacDonald* at p 338; *Monsanto v Canada (Health)*, 2020 FC 1053 at para 56; see also *Spencer v Canada (Attorney General)*, 2021 FC 361 at paras 58-59).

[13] The Respondents say that no serious issue arises in this case, because the Applicants' claims regarding the Vaccination Policy are barred by s 236 of the FPSLRA. The FPSLRA sets out an exclusive and comprehensive scheme for resolving employment-related disputes.

[14] The Applicants maintain that the Vaccination Policy is not in fact directed towards labour relations, but is instead part of a broader government initiative to encourage the Canadian population to undergo vaccination. They have offered no evidence in support of this assertion. The evidence tendered by the Respondent confirms that the Vaccination Policy is intended to promote health and safety within the core public administration, and to facilitate a return to normal operations. Furthermore, there is no issue more fundamental to labour relations than whether an employee is paid or not.

[15] Employer-employee relationships in the federal public service are governed by collective agreements and federal legislation. The Supreme Court of Canada has ruled in *Vaughan v Canada*, [2005] 1 SCR 146 [*Vaughan*] that, where Parliament has created a comprehensive scheme for dealing with labour disputes, the dispute resolution process contained in the legislation should not be jeopardized by permitting routine access to the courts. Accordingly, courts should generally decline to exercise their discretion to hear employment-related disputes, even when they do have jurisdiction (*Vaughan* at para 39).

[16] Subsection 236(1) of the FPSLRA provides as follows:

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.

[17] The right to grieve is available to employees as defined in s 206(1) of the FPSLRA. Both unionized and non-unionized employees have the right to file a grievance. The Respondent says that the Applicants' right to grieve encompasses the present challenge to the Vaccination Policy, because it concerns their "terms and conditions of employment", as that expression is used in s 208 of the FPSLRA:

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:
(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.

[18] An employee may present an individual grievance relating to any matter set out in s 208. According to the Respondent, bargaining agent approval is only required for grievances relating to the interpretation or application of a collective agreement or an arbitral award. The right to grieve is "very broad", and "[a]lmost all employment-related disputes can be grieved under s 208 of the FPSLRA" (*Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*] at paras 14-15).

[19] The Respondent notes that government departments have reported approximately 90 grievances from employees related to the Vaccination Policy. At least one of the Applicants in this proceeding has presented a grievance under the FPSLRA in relation to the Vaccination Policy, supported by his bargaining agent.

[20] Members of the RCMP have limited rights to grieve under s 238.24 of the FPSLRA, but they have other grievance and appeal rights under the *Royal Canadian Mounted Police Act*, RSC

1985, c R-10 [RCMP Act]. Regular and civilian members, and special constable members, have a broad right to grieve pursuant to s 31 of the RCMP Act. A member may present a grievance to his or her supervisor, or to a centralized office that administers the grievance process and hears appeals. According to the Respondent, the lone Applicant who is a member of the Royal Canadian Mounted Police has requested accommodation under the Vaccination Policy, and has not been placed on leave without pay pending a decision.

[21] Subsection 236(1) of the FPSLRA has been recognized as an "explicit ouster" of the courts' jurisdiction (*Bron* at para 4). As the Quebec Court of Appeal held in *Bouchard c Procureur général du Canada*, 2019 QCCA 2067, 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.

[22] In *Vaughan*, the Supreme Court of Canada confirmed that courts should decline to exercise any residual jurisdiction they may have to intervene in employment-related matters, save in "exceptional cases". In *Lebrasseur v Canada*, 2007 FCA 330, the Federal Court of Appeal suggested that an exception might be found if the integrity of the grievance procedure has been compromised based on the evidence presented in a particular case. The onus of establishing that there is room for the exercise of a court's residual discretion lies with an applicant (at paras 18-19).

[23] 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 v Ontario Hydro*,

[1995] 2 SCR 929 [*Weber*] at para 57). Here, the ultimate remedies sought by the Applicants include the cancellation of the Vaccination Policy, a declaration that their Charter rights have been violated, reinstatement of their employment, and reimbursement of lost wages.

[24] The grievance submitted by the Applicant Pascal Musacchio respecting his employer's refusal to grant his request for accommodation under the Vaccination Policy seeks the following corrective action:

> (a) that the Employer cease its discriminatory practices against me;
>
> (b) that I be accommodated;
>
> (c) that I not be directly or indirectly differentiated adversely by my Employer;
>
> (d) that I be provided compensation for any and all loss of compensation or wages as a result of my Employer's action(s), omission(s) or decision(s);
>
> (e) that I be reimbursed for all leave that I have had or will have to use in relation to my employer's actions or omissions;
>
> (f) that I be treated fairly and in accordance with the Canadian Human Rights Act ("CHRA") and, any and all other policies, rules, directives, laws, principles, practices or other documentation which apply;
>
> (g) that I be awarded damages, as determined by the Federal Public Service Labour Relations and Employment Board or other decision-maker(s), in compensation for my Employer's action(s), omission(s) and discrimination towards me;
>
> (h) that I be compensated for any and all costs and expenses incurred as a result of my Employer's action(s), omission(s) or decision(s);
>
> (i) that I be paid interest; and,
>
> (j) any and all other corrective action that will make [me] whole.

[25] These are all remedies that may be granted by a labour adjudicator or, where applicable, the Federal Public Sector Labour Relations and Employment Board [FPSLREB]. Furthermore, as illustrated by a recent decision concerning Canada Post's mandatory vaccine policy, in an appropriate case a labour arbitrator may consider a request for interlocutory relief on an urgent basis (*Re Application for Interlocutory Cease and Desist Order in Relation to CUPW Grievance No N00-20-00008*, November 30, 2021).

[26] The Charter issues raised by the Applicants engage broad policy concerns, but these nevertheless form a component of a labour dispute. They therefore fall within the jurisdiction of a labour arbitrator (*Weber* at para 60). Furthermore, statutory tribunals may be deemed courts of competent jurisdiction to grant remedies under s 24(1) of the Charter, provided they have jurisdiction over the parties and the subject matter of the dispute, and are empowered to make the orders sought.

[27] The Applicants have failed to demonstrate that a labour adjudicator or the FPSLREB would be unable to determine the application of the Vaccination Policy to their employment. If the Vaccination Policy were found to be invalid or inapplicable in the Applicants' personal circumstances, then a labour adjudicator or the FPSLREB could reinstate their employment and/or award compensation for lost wages, damages, and any infringement of the Charter or other human rights legislation.

[28] The Applicants assert that the exclusive jurisdiction of a labour arbitrator is subject to the residual curial jurisdiction to grant remedies that lie outside the remedial authority of a labour

arbitrator, including interlocutory injunctions where necessary to ensure there is no "deprivation of ultimate remedy" (*Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 23). However, as Justice Sean Dunphy of the Ontario Superior Court held in *Blake v University Health Network*, 2021 ONSC 7139 at paragraph 17:

> […] where judicial discretion exists, it must always and everywhere be exercised judicially. The residual authority in question is not a sort of Trojan Horse that can be applied to undermine the exclusive jurisdiction of the arbitration process or the exclusive agency of the union in representing its members through that process. Properly understood, the residual discretion must be seen as complementary to and not destructive of those fundamental labour relations principles.

[29] As Justice Catherine Kane held in *Public Service Alliance of Canada v Canada (Attorney General)*, 2020 FC 481 at paragraph 64, the residual discretion arises only if the issue is clearly not grievable; and even then, it remains a discretion to be exercised in accordance with the jurisprudence which instructs that resort to the grievance process is the first recourse (at para 65, citing *Bron* and *Vaughan*).

[30] In *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, 2021 ONSC 7658 [*TTC*], a case that bears a close resemblance to this one, Justice Jasmine Akbarali of the Ontario Superior Court of Justice concluded that in circumstances such as these, the courts' residual jurisdiction is simply not engaged (at para 59).

[31] If this Court were to exercise any residual discretion it may have to hear and decide the Applicants' motion for an interlocutory injunction, this would have the effect of undermining the

labour grievance process enacted by Parliament. The Court would be pre-empting 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.

B. *Irreparable Harm*

[32] In light of my conclusion that the Court should not exercise any residual discretion it may have to intervene in this labour dispute, it is not strictly necessary to consider the remaining branches of *RJR-MacDonald* test. However, as Justice Akbarali noted in *TTC*, "[t]here is overlap in the analysis of the jurisdictional issue, in particular with the second element of the test for interim injunctive relief: whether the applicant will suffer irreparable harm which cannot be compensated for in damages" (at para 37).

[33] The Applicants in this case argue that the jeopardy they face as a result of the Vaccination Policy transcends the risk to their employment and lost wages. According to the Applicants, "[t]his case is not about preserving employment as much as about preserving [the] Applicants' right to refuse medical treatment, without the threat of financial reprisal, stigma, and social isolation".

[34] First, as the Supreme Court of Canada observed in *Weber*, it does not matter how a claim can be or is characterized legally. What matters is whether the facts of the dispute fall within the ambit of the collective agreement or labour grievance regime (*Weber* at para 44). That is clearly the case here.

[35] Second, as Justice Akbarali explained in *TTC*, the Applicants have mischaracterized the harm at issue. The harm the Applicants may suffer is being placed on unpaid leave, or being terminated from employment, if they remain unvaccinated. They are not being forced to get vaccinated; they are being forced to choose between getting vaccinated and continuing to have an income on the one hand, or remaining unvaccinated and losing their income on the other (*TTC* at para 50, citing *Lachance et al c Procureur général du Québec*, November 15, 2021, Court No 500-17-118565-210) at para. 144 [*Lachance*]). Put simply, a vaccine mandate does not cause irreparable harm because it does not force vaccination.

[36] Justice Akbarali continued in *TTC* at paragraphs 52 and 53:

> Because I have concluded that the harm in this case is not the alleged violations of informed consent, bodily autonomy or the reasonable probability of personal injury from being coerced into becoming vaccinated, the expert evidence proposed by the parties with respect to the safety of vaccines is not relevant, and I need not address it, nor consider whether the experts ought to be qualified. No one is forced to get vaccinated.
>
> Notwithstanding the stress, both emotional and financial, caused by the loss of employment, loss of employment has been repeatedly held to be a reparable harm: see, for example *Lachance*. The same conclusion was reached by Marrocco J. in *Amalgamated Transit Union, Local 113 v. Toronto Transit Commission*, 2017 ONSC 2078, at para. 79 (dealing with random drug and alcohol testing).

[37] Finally, as Justice Nicholas McHaffie held in *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232 [*Lavergne-Poitras*] at paragraph 7, the loss of employment, while a significant and important consequence, is something that can be compensated in monetary damages.

[38] The Applicants have therefore failed to demonstrate that they will suffer irreparable harm if an injunction is not granted.

V. Conclusion

[39] The Applicants have not demonstrated that this Court should exercise any residual discretion it may have to stay the operation of the Vaccination Policy for all members of the core public administration. Nor have they demonstrated that they will suffer irreparable harm if an injunction is not granted. The motion must therefore be refused on the grounds that the Applicants have not met the criteria of establishing a serious issue to be tried or irreparable harm.

[40] As alternative relief, the Applicants ask this Court to stay the operation of the Vaccination Policy for them individually, pending the exhaustion of remedies available through the grievance process. However, the failure of the Applicants to demonstrate a serious issue or irreparable harm precludes the granting of injunctive relief, either for them as individuals or as representatives of the core public administration (*Lavergne-Poitras* at para 101). The alternative relief must also be denied.

[41] The Respondent does not seek costs of this motion, without prejudice to his right to seek costs in the underlying application for judicial review or the related action should either of those matters proceed.

ORDER

THIS COURT ORDERS that the Applicants' motion for an interlocutory injunction is dismissed without costs.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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