

Federal Court



Cour fédérale

Date: 20240313

Docket: T-1436-22

Citation: 2024 FC 420

Vancouver, British Columbia, March 13, 2024

PRESENT: Madam Associate Judge Catherine A. Coughlan

BETWEEN:

**BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ,
JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA,
ALI BAHRI, RAYMOND. S. BAKER, DAVID BAKHUYZEN, KIM
BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI,
MICHAEL BECKER, JASON MATTHEW BERARD, WANDA
BERG, LAURIE BERNES, ANDREA BIALOWAS, THERESA
BICKLE, ANGELLA BLIER, MARK BOIKOVITIS,
ERIK BOUCHARD, ROBERT BOURBONNIERE,
BROOKE BOUTANG, VERONIQUE BRETON, NATASHA BUDY,
JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE
CABRAL-MCKEAND, EDUARDO CAETANO,
ANTHONY CAETANO, JENNIFER CAUDRON, TRACY CHASE,
NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW,
CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS,
SANDRA COLE, JENNIFER COMIN, ANTHONY COMMISSO,
TANYA DOCANTO CORDEIRO, ESTERINA COSTA, ROCCO
COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD
COUTURIER, WAYNE COWAN, KENTON CROOK,
MICHAEL CURRIE, SELENA CVITAN, MARK DAGGETT,
MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA
DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH,
ANTHONY DEROSE, LORRAINE DESCHAMPS, GISELE
DESHARNAIS, KAREN DESROSIERS, JOHN DEVINE, SUSAN
DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM,
BRANDY DUPAS, TERESA ELLISON, JOHN EMMANOUIL,
JOHANNA EMMANOUIL, SHELLEY ESCOBAR, JOY
ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA,
SHERRY FERREIRA, PAXTON FIRTH, MICHELINE FLEURY,
SARAH FRANGIONE, ERIN FULLER, MICHAEL GAIREY,
JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE GOW,
JAYDE GRAVEL, MICHAEL GRIGORATOU, URVASHI**

GURUNG, RYAN HAMER, CHARLENE HANSON, JASMIN HARRISON, CARLY HART, TAMMY HAYES, JAYSON PETER JAMES HEIDEBRECHT, DENISE HERBERT, JORGIE HIDALGO, TIMOTHY HIEBERT, DONNA HISCOCK, DENISE HOHN, ELAINA HUDYMA, KATHRYN (KATIE) HUNT, TANYA HUTCHINSON, ZDZISŁAW JABŁOŃSKI, MARTINE JARRY, CARLA JENKINS, STEPHANIE KATHLEEN JOHNSTON, NICHOLAS JOHNSTON, RIINA KAPP, RUDY KERN, MARK KILLEEN, SABRINA KINCAID, MARIETTA KIRBY, SANDRA KOSTENKO, CALVIN KOTOWICH, DAMIR KRAMARIC, SANDRA KRASINKIEWICZ, ROCKY KUJALA, HELENE LA ROCHELLE, AVINASH LALOO, MEGAN LANE-KARRAS, MARTINE LAROCQUE, LINE LAVALLEE, KEVIN LAWRES, CHUNG LE, LUC LEBLANC, DONNA LEEDER, PATRICK LESSARD, LISA LEVESQUE, LORRAINE LIGHT, GISELE LIRETTE, RANDY LOGAN, SANDRA M LOPES, KIM LUMSDEN, WENDY LUNDVALL, PAUL LUSSIER, PAUL LYNN, NICOLA MACDONALD, MICHAEL MAFILOVSKI, VIJAY MAHARAJ, CAROLINE MAHEUX, TANYA MANDEL, TRACY MA-PRICE, MARIE MARCOTTE, ANNA MARRO, DEVANMARSHALL, JUDY MARTENS, JOSYANNE MARTIN, JENNA MATHIES, TRACEY MATLOCK, DANIEL MATTI, WILLIAM GRANT MAYER, BOZENA MAZUR, DAWN MCFARLANE, MARGARET MCGEACHIE, CHRIS MCGRATH, LUCAS MCIVOR, KAREN MCQUADE, SZILVIA MERTL, ROCCO MESSERE, ANNA MIASIK, SARAH MICKALKO, JASON MIELKE, LAWRENCE (LARRY) MILLSON, SERGIO A MOLINA C, JAMES MORRIS, JAMES MORRISON, RACHEL MULLARKEY, PAUL NAHIRNIAK, DIDI (PREVIOUSLY DANIELLE) NAVALES (PREVIOUSLY FREEMAN), MARGARET NEB, AMANDA NEIL, SCOTT NEIL, TRACEY NELLIS, JOCELYN NELSON, GEORGE NICOLAIDES, LISA NICOLL, JULIE NOBLE, CHAD NORMANDEAU, CHERISE O'CONNOR, GERALDINE OLSON, MARC ORICHEFSKY, RYAN ORYDZUK, STEVEN OVERHOLT, KRISTY PACHOLKA FORD, FANY PELLETIER-GOUGEON, CHRIS PILLON, LESLIE J POLLOCK, ELZBIETA PONIKIEWSKA, KIMBERLEE PRIEST, NATHAN RAE (AKA ADAN EDEY), TRACEY RALSTON, KARL RATCHINSKY, DANIEL RAYO, ANTONIO REDA, JULIE REEVES, CORELEI REICHERT, DOLORES RELIC, AMBER RICARD, LENA (HELENE) RICCI, SHEILA RIDDELL, BREEANNE RIDGE, KEENAN ROBINSON, MICHAEL ROBITAILLE, MYRA ROBITAILLE, ROBERT ROBSON, JODI RODDY, DJ (DEBBY) RODNEY, AMANDA (GOOD) ROOSMETS, JEAN-FRANCOIS ROSA, SANDRA ROSSETTO, ANGELA

**RYCKMAN, STEPHANIE SAMSON, JOSHUA SAMUELSON,
RUSSEL "RUSS" SAWCHUK, JUSTIN SCHEFFER,
DEREK SCHOENFELDT, AARON SCHROEDER,
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JACQUELINE(JACKIE) SELK, FLAMUR SELMANI,
MARION SERINK, JOHN-LUIS GABRIEL SERRAMBANA,
DEWITT C. SHAINLINE, SHRIKANT (SHRE) SHARMA,
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NATHANIEL SLEDZ, BENJAMIN BRADLEY, ARTHUR SMITH,
KARINE SOLAKIAN, JULIE SRIGLEY, DAVID STEEVES,
KAREN STEVENS, MICHELENE STEWART, JAMES STEWART,
SUSAN STEWART, ROBERTA STRICKLAND, MARTYNA
STYRCZULA, LINDSAY SUNTHGOLAM, PAWEL SZOPA,
ANTHONY PALOZZI, STEVEN TANNER, LORI
TAYLOR, SINA TEHRANCHI, HOLLY THIBODEAU,
CHRISTOPHER THOMPSON, JENNIFER TOBIN, VANESSA
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DOUGLAS TRACY, CATY TRAN, HUGO TREJO, LARA
TRENAMAN, MELISA TREPANIER, CAROL-ANNE
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LUIZA VISIC, CARRIE VISSER, JENNIFER VOGELGESANG,
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MARIAM WALL, HEIDI WANJON, JOEL WAZNICKY, CORY
WEGE, ELVIN WEGNER, NANCY WHITCOME, WARREN
WHITE, JOHANN WILSON, JAMES WINNING, LINDEN
WRIGHT, SHANE YAWORSKI, YVONNE YUTUC, CARSON
ZORGET, MICHAEL ZOTTOLA, MARCIA HEWETT-HICKS**

Plaintiffs

and

**CANADA POST CORPORATION,
HIS MAJESTY THE KING IN RIGHT OF CANADA**

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendants, Canada Post Corporation (Canada Post) and His Majesty the King in Right of Canada (Canada), bring motions pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106 (*Rules*) seeking to strike the entirety of the Plaintiffs' Amended Amended Statement of Claim (Claim). The Plaintiffs' Claim raises issues with Canada Post's Mandatory Vaccination Practice (Practice).

[2] Canada Post alleges that the Federal Court's jurisdiction regarding claims against the Crown does not capture Canada Post, as per sections 17(1) and 17(2) of the *Federal Courts Act*, RSC, 1985, c F-7 (*FCA*). Alternatively, Canada Post asserts that the Plaintiffs, who are all unionized employees, are governed by collective agreements with their respective unions and Canada Post. As such, all workplace claims must be resolved through the exclusive jurisdiction of labour arbitrators under the collective agreements.

[3] Canada asserts that the Claim fails to plead or disclose any causative connection with Canada and it is plain and obvious that it does not disclose a cause of action against Canada. Further, Canada says that the Claim is scandalous, frivolous or vexatious because the pleading lacks any material facts to support the numerous causes of actions plead.

[4] For the reasons that follow, I am striking the Claim without leave to amend.

[5] These Reasons will outline the general background of the dispute, the legal principles that inform motions to strike, a review of the evidence adduced on these motions, the issues and an analysis of the parties' positions.

II. Background

[6] The Plaintiffs commenced the underlying action on July 12, 2022, amending the original Statement of Claim for the first time on June 19, 2023. On June 28, 2023, the Plaintiffs served a further amended Claim on the Defendants, but it was not filed with the Court until February 28, 2024. The Claim originally named 281 Plaintiffs who are current or former employees of Canada Post and who "resigned or retired under duress because of the Practice." The Claim states that the majority of the Plaintiffs have not been vaccinated against COVID-19 (partially nor fully).

[7] The Claim alleges that an October 6, 2021 news release issued by Canada constituted an "Order" requiring mandatory vaccination or the disclosure of vaccination status under threat of administrative and/or disciplinary measures ranging from unpaid leave to termination of employment. The Plaintiffs say the Order constitutes a serious human rights violation that effectively deprived them of their rights under sections 2(a), 7, and 15 of the *Canadian Charter of Rights and Freedoms (Charter)*. The Plaintiffs further allege that the Order made Canada Post an "agent of Canada in implementing public health and economic policies on behalf of and for Canada."

[8] The Claim seeks a variety of relief against Canada Post and Canada arising from the implementation and enforcement of the Practice as follows:

- (i) a declaration pursuant to section 24(1) of the *Constitution Act, 1982* that Canada's October 6, 2021 announcement, violates sections 2(a), 7, 8 and 15 of the Plaintiffs' constitutional rights and freedoms protected by the *Charter*;
- (ii) a declaration pursuant to section 24(1) of the *Constitution Act, 1982* that the Practice violates sections 2(a), 2(d), 7, 8, and 15 of the *Charter*;
- (iii) a declaration that Canada Post and Canada discriminated against the Plaintiffs contrary to section 7(b) of the *Canadian Human Rights Act (CHRA)*, and deprived the Plaintiffs of employment opportunities contrary to sections 10(a) and 10(b) of the *CHRA*;
- (iv) damages in the amount of \$500,000 per Plaintiff under section 24(1) of the *Constitution Act, 1982*;
- (v) damages in the amount of \$200,000 per Plaintiff for intentional infliction of mental suffering;
- (vi) damages in the amount of \$200,000 per Plaintiff for tortious interference in economic relations;
- (vii) damages in the amount of \$200,000 per Plaintiff for tortious assault and battery;
- (viii) punitive and exemplary damages in the amount of \$500,000 per Plaintiff;
- (ix) special damages in an amount to be determined, including but not limited to past or future loss of income, medical expenses, and out of pocket expenses;
- (x) punitive damages pursuant to the *Quebec Charter*; and

- (xi) damages for inducing breach of contract, interference with contractual relations, and negligence.

[9] In November 2023, the parties sought the appointment of a case management judge and the suspension of the timelines. Consequently, the Defendants were relieved of the obligation to file Statements of Defence until after the within motion was determined.

[10] It is noteworthy that by the time the motion was heard, some 132 Plaintiffs had discontinued their action.

III. The Legal Principles

[11] There is no dispute as to the test for striking pleadings under Rule 221(1). A pleading will only be struck if it is plain and obvious, assuming the facts pleaded are true or capable of being proved, that the pleading discloses no reasonable cause of action: *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 15, [2003] 3 SCR 263; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980, 1990 CanLII 90 (SCC); *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17, [2011] 3 SCR 45; *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89 at para 15.

[12] In deciding a Rule 221(1) motion, the Court must read the pleading generously, with allowance for drafting deficiencies.

[13] Rule 221(1)(c) authorizes the Court to strike pleadings that are scandalous, frivolous or vexatious. Scandalous pleadings include those that improperly cast a derogatory light on someone's moral character. A frivolous claim is one for which there is no rational argument based

upon the evidence or law in support of the claim. A vexatious claim is one that does not sufficiently reveal the facts on which a plaintiff's cause of action is based such that the defendant will be unable to answer it: *Carten v Canada*, 2010 FC 857 at paras 33-34.

[14] Making bald, conclusory allegations of bad faith or abuse of power without any evidentiary foundation is an abuse of process within the meaning of Rule 221(1)(f): *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34; *AstraZeneca Canada Inc v Novopharm Limited*, 2010 FCA 112 at para 5; *Apotex Inc v Allergan, Inc*, 2011 FCA 134 at para 4.

[15] Striking a pleading without leave to amend is a power that must be exercised with caution. If a pleading shows a scintilla of a cause of action, it will not be struck out if it can be cured by amendment: *Al Omani v Canada*, 2017 FC 786 at paras 32-35.

[16] The threshold for striking a pleading is high. Pursuant to Rule 221(2), no evidence is permitted on a motion to strike pursuant to Rule 221(1)(a). Instead, the Court is required to limit its examination to the matters set out in the pleadings.

[17] The Federal Court of Appeal has confirmed that there are no separate rules of pleadings for *Charter* cases. The requirement to plead material facts applies equally to pleadings of *Charter* infringement as it does to causes of action rooted in the common law. The Supreme Court of Canada (SCC) has clearly defined the substantive content of each *Charter* right and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provisions in question. This is not a technicality, but rather is essential to the proper presentation of *Charter* issues: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 para 25; *MacKay v Manitoba*, [1989] 2 SCR 357 at pp 361-367.

[18] While evidence is not generally admissible on a motion to strike on the basis of failing to disclose a reasonable cause of action, it may be admitted where a jurisdictional question is raised. Where a court is asked to decline jurisdiction in favour of an alternate process, evidence may be necessary to permit the court's determination of whether it ought to decline jurisdiction in favour of the alternate administrative remedies: *Canada v Greenwood*, 2021 FCA 186 at paras 95-96.

IV. The Evidence

[19] In the present matter, each party filed an affidavit in support of their position.

A. *Mr. Deveen*

[20] Canada Post filed the affidavit of John Deveen, sworn August 18, 2023. Mr. Deveen is the General Manager, Labour Relations for Canada Post. His affidavit provides comprehensive evidence on a number of matters including:

1. The corporate structure of Canada Post;
2. Canada Post's relationship to Canada;
3. Canada Post's health and safety obligations under the *Canada Labour Code*, RSC, 1985, c L-2 (Code);
4. Canada Post's response to the COVID-19 pandemic generally and its response to the Prime Minister's October 6, 2021 announcement concerning the vaccination of the federal public service;
5. Canada Post's decision to implement the Vaccination Practice as well as its decision to suspend the Vaccination Practice;

6. Information on each named Plaintiff and the union to which each Plaintiff had membership;
7. Copies of the collective agreements for each of the four unions: Canadian Postmasters Assistants Association (CPAA); Canadian Union of Postal Workers (CUPW); Association of Postal Officials (APOC) and Public Service Alliance of Canada (PSAC);
8. A list of 178 Plaintiffs who have filed at least one grievance challenging the Vaccination Practice;
9. A list of Plaintiffs who have filed a complaint with the Canadian Human Rights Commission concerning the Vaccination Practice;
10. A list of the 10 policy grievances launched by the four unions under their respective collective agreements, the Code and the *CHRA* and the current status of each grievance; and
11. A summary of the other complaints made to the Canadian Industrial Relations Board by some of the Plaintiffs.

[21] Of particular relevance for this motion is Mr. Deveen's evidence that Canada Post is a Crown Corporation created and governed by the *Canada Post Corporation Act*, RSC, 1985, c C-10 (*CPCA*). Pursuant to section 10(1) of the *CPCA*, a Board of Directors is responsible for the affairs of Canada Post. While Canada is the sole shareholder of Canada Post, it has limited operational involvement with Canada Post and its day-to-day operations. However, pursuant to section 22 of

the *CPCA*, the Minister responsible may give Canada Post directives with which Canada Post is required to comply. Similarly, under section 89 of the *Financial Administration Act*, RSC, 1985, c F-11, the Governor in Council may give directives to a Crown Corporation, which must be implemented. Mr. Deveen deposes that no directives were issued during the pandemic concerning a mandatory vaccination policy or the vaccination of employees more generally.

[22] In response to the COVID-19 pandemic, Mr. Deveen outlines the changes Canada Post undertook to its operations to address the scale and seriousness of the pandemic. Those measures included reduction of hours of service, physical distancing, and the suspension of delivery guarantees, to name a few. Mr. Deveen deposes that throughout the pandemic, Canada Post followed the guidance of the Public Health Agency of Canada and provincial and local health agencies. It also engaged its bargaining agents and health and safety committees to “plan, communicate and address COVID-19 related changes, plans and protocols across Canada Post’s workforce.”

[23] As a federally regulated employer, Mr. Deveen deposes that Canada Post must abide by the health and safety obligations set out in Part II of the Code. Under section 124 of the Code, there is a duty on the employer to ensure that the health and safety at work of every person employed by the employer is protected. Mr. Deveen states that Canada Post’s response to the pandemic regarding employees was based in large part on these obligations.

[24] Mr. Deveen notes that on October 6, 2021, Prime Minister Trudeau announced the Core Public Administration Policy on Vaccination. That policy required the mandatory vaccination of all core public servants. At the same time, the Prime Minister asked that all Crown Corporations implement mandatory vaccination policies. A letter dated October 25, 2021 from the Honourable

Anita Anand, then Minister of Public Services and Procurement, followed that request reiterating her expectation that all other federal institutions, including Crown Corporations would align with the Core Administration Policy on Vaccination.

[25] Mr. Deveen notes that on October 22, 2021, Canada Post approved a mandatory Vaccination Practice under its overarching Health and Safety Policy. That policy required all employees, contractors and visitors to Canada Post facilities to be fully vaccinated unless they could not be vaccinated due to a prohibited ground of discrimination as defined in the *CHRA*.

[26] Employees were required to attest to their vaccination status as fully vaccinated; partially vaccinated and intending to become fully vaccinated; unwilling to be vaccinated; or unable to be vaccinated.

[27] Canada Post suspended the Practice on July 6, 2022. Mr. Deveen deposes that all employees who were on leave without pay as a result of non-compliance with the Practice were invited back to work.

B. Ms. Solakian

[28] In response, the Plaintiffs filed the affidavit of Karine Solakian, sworn September 15, 2023. Ms. Solakian deposes that she was employed by Canada Post for three years as an acting Lead Hand, Retail Counter Clerk. She states that she was placed on involuntary unpaid leave on or around November 26, 2021 for refusing to attest to her vaccination status as required by the Practice.

[29] She further deposes that prior to the implementation of the Practice, none of the Plaintiffs were required to receive the COVID-19 vaccine as a condition of employment with Canada Post. She asserts that throughout 2020 and most of 2021, she worked without interruption in service.

[30] Ms. Solakian acknowledges that the collective bargaining agreements referred to by Mr. Deveen's in his affidavit are the agreements at issue in this motion.

[31] At paragraph 15 of her affidavit, Ms. Solakian describes the testimony of the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, at the Public Order Emergency Commission before Justice Rouleau. There, Ms. Solakian notes that the Deputy Prime Minister testified that the purpose of the vaccine mandate for the transport industry was to encourage as many Canadians as possible to get vaccinated.

[32] Ms. Solakian then deposes as to the application of the Practice within Canada Post and the procedure by which employees were required to attest as to the vaccination status. This, she says, was implemented by a series of pre-recorded telephone messages that did not allow employees to make a statement. She notes that while the Practice provided for limited accommodations, she understands that only a minute number of accommodations were granted. She provides no basis

or source for this belief. She advises that she did not seek an accommodation and was not willing to provide a third party with her personal medical information.

[33] She asserts that because she was placed on involuntary leave, she lost her sole source of income and her privacy was breached.

[34] Further, she claims that the Practice was not a matter of workplace safety but was a public policy matter. She claims, again without any source for her belief, that COVID-19 disproportionately affects people past retirement age and that Canada Post was used as a pawn for public policy reasons. She claims there was no *bona fide* requirement for the Practice and she did not agree to vaccinations as a term of employment. She asserts, “it was unilaterally forced upon me, and agreed to by my union.” Thus, she believes that she cannot expect fair treatment from her union and the grievance process.

[35] Both Mr. Deveen and Ms. Solakian were cross-examined on their affidavits.

[36] In its Memorandum of Fact and Law, Canada Post relies on a number of admissions obtained from the cross-examination of Ms. Solakian. Specifically, she acknowledged:

- (a) she had no involvement in or knowledge of the management of Canada Post’s operations;
- (b) she had no involvement in the discussions, development, and implementation of the Practice and has no knowledge of such matters;
- (c) she had no involvement in any discussions or interactions between Canada Post and the Federal Government concerning the Practice, and has no knowledge of such discussions or interactions;

- (d) she has no basis to disagree with Canada Post's evidence that it adopted the Practice for reasons related to workplace safety;
- (e) she does not know the reasons why Canada Post implemented the Practice;
- (f) she only became involved in the Claim after her union lost its grievance challenging the Practice and the CIRB rejected a related complaint.

C. *Ms. Harper*

[37] Canada filed the affidavit of Charlotte Harper, sworn August 16, 2023. Ms. Harper's affidavit attaches, without commentary, a news release from the Treasury Board of Canada Secretariat dated August 13, 2021 and October 6, 2021 announcing Canada's intention to require vaccination of the federally regulated transportation sector and the implementation of mandatory vaccination requirements for federally regulated transportation employees and travellers.

V. The Issues

[38] In my view, two issues emerge for the Court's consideration:

- 1) Does this Court have jurisdiction to entertain the Claim?
- 2) Assuming the Court has jurisdiction, is Canada a proper party?

[39] In addition to the two broad issues above, a preliminary issue arises that warrants consideration.

[40] Rule 174 requires that every pleading shall contain a concise statement of the material facts on which the party relies. Failure to plead material facts renders a pleading vexatious.

[41] Although the Plaintiffs have amended their Claim twice, it is clear that even on a generous reading, the Claim fails to plead any material facts in support of the various causes of action plead. For example, it is entirely unclear if every Plaintiff is asserting a breach of subsection 2(a) of the *Charter*.

[42] An assertion of infringement of subsection 2(a) requires that 1) the claimant sincerely believes in a belief or practice that has a nexus with religion; and 2) the impugned measure interferes with the claimant's ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial: *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at paras 8-9 and 40-42, [2009] 2 SCR 567 (*Hutterian Brethren*). Here, the Plaintiffs merely assert that the Practice and the Government announcement offend their beliefs. That form of pleading fails to address the two-fold requirement set out in *Hutterian Brethren*.

[43] Indeed, in my view, the Plaintiffs simply plead bald conclusions of law without the requisite material facts. This failing is particularly acute given the host of appellate jurisprudence from across Canada dismissing actions and applications alleging *Charter* and other violations stemming from the public health response to the pandemic: *Spencer v Canada (Attorney General)*, 2023 FCA 8; *Turmel v Canada*, 2022 FCA 166; *Harjee v Ontario*, 2023 ONCA 716 (CanLII); *Ontario (Attorney General) v Trinity Bible Chapel*, 2023 ONCA 134 (CanLII) (SCC leave denied); *Beaudoin v British Columbia (Attorney General)*, 2022 BCCA 427 (CanLII).

[44] In this Court, Associate Chief Justice Gagné thoroughly canvassed the body of unsuccessful actions and applications in both the federal and provincial superior courts concerning the imposition of health measures during the pandemic: *Ben Naoum v Canada (Attorney General)*, 2022 FC 1463 at para 42. In the face of that extensive body of jurisprudence, it was incumbent

upon the Plaintiffs to plead material facts that would meet the legal test and would distinguish their case from the litany of unsuccessful applications and actions. They failed to do so.

[45] From my reading of the Claim, I must too conclude that it fails to plead, with sufficient particularity, the constituent elements of any cause of action. In short, it fails to disclose to the Defendant the who, when, where, how and what gives rise to its liability: see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19.

[46] This is a sufficient basis for the Court to strike the Claim. However, as I must assess whether leave to amend should be granted, I will address the remaining issues.

VI. Does the Court have jurisdiction?

[47] As noted at the outset of these Reasons, Canada Post advances two distinct arguments asserting this Court has no jurisdiction to entertain the Claim.

[48] First, it argues that as a Crown Corporation, the Federal Court lacks jurisdiction over Canada Post pursuant to sections 17(1), 17(2) and 17(5) of the *FCA*. Citing the oft-quoted decision in *ITO-Int'l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752 (SCC), Canada Post argues that none of the three-part test for jurisdiction is met: There is no statutory grant of jurisdiction by the Federal Parliament; there is no existing body of federal law which is essential to the disposition of the case and which nourishes a statutory grant of jurisdiction; and this is not a case based on the “law of Canada” under section 101 of the *Constitution Act, 1867*.

[49] Further, Canada Post relies on the recent decision of Associate Judge Horne in *Van Sluytman v Canada*, 2022 FC 545 at para 56, for the proposition that section 17 of the FCA only applies to the Crown, *eo nomine* (by its name), and not to statutory corporations acting as agent for the Crown: *Committee for Monetary and Economic Reform v Canada*, 2014 FC 380 at paras 87-88; affirmed 2015 FCA 20.

[50] In its responding memorandum of fact and law, the Plaintiffs do not address this argument directly. Rather, they assert that the Federal Government acting under statutory and constitutional law effectively controls Canada Post. To bolster their position, they point to section 91(5) of the *Constitution Act* where the Government of Canada has exclusive authority over postal services. Any arguments that suggest that Canada Post is not an agent of the Federal Government, the Plaintiffs say, amounts to “legal sophistry”.

[51] I do not accept the Plaintiffs’ argument. In my view, there is no evidence before the Court to support the Plaintiffs’ assertion that Canada Post was acting under the direction of Canada when implementing the Practice. Indeed the evidence of Mr. Deveen is unequivocal that Canada Post received no directives from Canada with respect to the implementation of the Practice. Equally, Mr. Deveen was clear that the October 6, 2021, announcement from the Prime Minister regarding the Core Public Administration Policy on Vaccination certainly influenced Canada Post’s decision to implement the Practice, but at no time was it ordered to do so.

[52] I am satisfied that this Court has no jurisdiction over Canada Post pursuant to sections 17(1) and 17(2) of the *FCA*. Thus, it is plain and obvious that the action cannot succeed against Canada Post and must be struck.

[53] That conclusion is sufficient to dispose of the motion as against Canada Post. However, in the interests of completeness, I propose to address Canada Post's second argument.

[54] Canada Post argues that the Claim, properly characterized, raises workplace issues that require adjudication in the grievance arbitration processes available to unionized employees. Canada Post asserts that numerous defendants in other actions involving Crown Corporations, the Federal Government and private employers alike have moved to strike similar claims where grievance processes were available.

[55] In response, the Plaintiffs argue that the Court should exercise its residual discretion to take jurisdiction because the essential character of the Claim is not captured by the collective agreements. Rather, the Plaintiffs assert that the Claim is about government coercion that affects human dignity. Before the Court, Counsel argued that the Practice subjected the Plaintiffs to "what amounts to an experimental drug trial." In doing so, Canada "weaponized" Canada Post and thus violated the Plaintiffs' human rights.

[56] Moreover, the Plaintiffs say that grievance processes are inadequate when one's bodily integrity has been violated.

[57] I do not accept the Plaintiffs' arguments. First, each of the Plaintiffs have brought at least one grievance. In the National Policy Grievance filed by the CUPW on November 15, 2021, and exhibited to Mr. Deveen's affidavit at Exhibit "M", the union characterized the Practice as a violation of the Collective Agreement, the *Charter*, the Code and the general law. Further, it asserted that the implementation of the Practice was "an unreasonable, exercise of management rights and causes prejudice and is unreasonable, unjust and unfair to employees." The Grievance further asserted that the requirement that employees be fully vaccinated constitutes coercion, breach of privacy, and is unreasonable and unnecessary to protect the Health and Safety of employees.

[58] In my view, the causes of action raised in the Claim are the same as those raised in the National Policy Grievance and accordingly engage workplace issues. Those issues are factually related to the rights and obligations under the collective agreements. I am bolstered in my view by Ms. Solakian's admission that she has no basis to disagree with Canada Post's evidence that it adopted the Practice for reasons related to workplace safety and that she only became involved in the Claim after her union lost its grievance.

[59] Second, as the Supreme Court of Canada found in *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 13, affirming the principles established in *Weber v Ontario Hydro* [1995] 2 SCR 929, it is "settled law that the scope of a labour arbitrator's jurisdiction precludes curial recourse in disputes that arise from a collective agreement, even where such disputes also give rise to common law or statutory claims."

[60] Once again, courts across Canada have consistently concluded that disputes regarding mandatory vaccination policies must be adjudicated within the grievance process. As the Ontario Court of Appeal observed in *National Organized Workers Union v Sinai Health System*, 2022 ONCA 802 at para 41:

It is not uncommon for employees to have to make choices in the context of their employment that they might not choose to make absent workplace considerations. In a unionized environment, if the employee objects to the requirements of a workplace policy, the remedy is a grievance carried by the union. If the employee chooses not to comply with the policy pending the grievance arbitration, they may face workplace discipline, including, depending on the circumstances, termination. In these circumstances, employees sometimes have to make difficult choices. To characterize this type of choice as something other than a potential loss of employment (compensable by an arbitrator by the usual remedies of reinstatement and awards for lost wages), would jeopardize the role of arbitration as the exclusive forum to resolve workplace disputes by permitting “routine access to the courts”: *Vaughan v Canada*, 2005 SCC 11 at para 39.

[See also *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paras 27 and 34-36 (appeal dismissed as moot: 2022 FCA 120); *Lachance c Procureur général du Québec*, 2021 QCCS 4721, at paras 137 and 144; *Milka Cavic v Canadian Union of Public Employees Union Local 905*, 2022 CanLII 5015 (Ont LRB) at para 43; *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232 at para 7.]

[61] In the result, I am satisfied that the essential character of the Claim raises workplace issues captured by the collective agreements and within the exclusive jurisdiction of adjudicators. Moreover, there is no evidence before the Court to support the assertion that the grievance processes are inadequate. Rather, the Plaintiffs have simply failed to obtain the relief they want through those processes and now look to the Court as another avenue of redress. In short, the Plaintiffs have failed to show any real deprivation of a remedy that would allow this Court to exercise its residual discretion to take jurisdiction and I decline to do so.

[62] The action must be struck against Canada Post.

A. *Is Canada a proper party?*

[63] I am satisfied that the Claim does not plead any material facts that establish a relationship between Canada and the Plaintiffs. The Plaintiffs are all Canada Post employees. Indeed, the unchallenged evidence led on this motion makes it clear that Canada did not issue any directives to Canada Post during the pandemic. Rather, Canada's October 6, 2021 announcement was directed solely to the Core Federal Administration and not to Crown Corporations. In those circumstances, it is difficult to conceive of any relationship that could give rise to a cause of action against Canada.

[64] At the hearing of the motion, counsel for Canada noted that the Attorney General of Canada was improperly named in this proceeding. I agree.

[65] Accordingly, the style of cause is amended with immediate effect to remove the Attorney General of Canada and the Claim as against Canada is struck.

B. *Should the Plaintiffs be granted leave to amend?*

[66] Rule 221 requires that I consider whether leave should be granted to permit an amendment to the Claim. At the hearing of this motion, counsel for the Plaintiffs argued that the failure to plead material facts could be remedied by the provision of particulars. It remains, however, that given my conclusion that this Court has no jurisdiction over Canada Post, that the lack of material facts is not a defect that can be cured by amendment.

[67] Similarly, with respect to the claim against Canada, there is no amendment that will alter the fact that there is no legal relationship between Canada and the Plaintiffs that gives rise to a cause of action. In the result, leave to amend is refused.

VII. Costs

[68] At the hearing of the motion, the parties advised the Court that they had come to an agreement on the issue of costs. The agreement provides that if the moving parties were successful costs would be set at \$10,000 for each of Canada and Canada Post against the Plaintiffs on a joint and several basis. If the Plaintiffs were successful, costs would be set at \$5,000 from each of the moving parties. If success were divided, costs would be in the cause.

[69] I see no reason to deviate from the parties' agreement. In the result, Canada Post and Canada shall each have their costs, inclusive of taxes and disbursements set at \$10,000 payable, jointly and severally from the Plaintiffs.

ORDER in T-1436-22

THIS COURT ORDERS that:

1. The motions of Canada Post and Canada are allowed.
2. The Amended Amended Statement of Claim is struck without leave to amend.
3. Canada and Canada Post shall have their costs set at \$10,000 each payable by the Plaintiffs, jointly and severally.
4. The style of cause is hereby amended with immediate effect to remove any reference to the Attorney General of Canada.

"Catherine A. Coughlan"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1436-22

STYLE OF CAUSE:

BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ, JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA, ALI BAHRI, RAYMOND. S. BAKER,, DAVID BAKHUYZEN, KIM BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI,, MICHAEL BECKER, JASON MATTHEW BERARD, WANDA BERG, LAURIE BERNES,, ANDREA BIALOWAS, THERESA BICKLE, ANGELLA BLIER, MARK BOIKOVITIS,, ERIK BOUCHARD, ROBERT BOURBONNIERE, BROOKE BOUTANG, VERONIQUE, BRETON, NATASHA BUDY, JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE, CABRAL-MCKEAND, EDUARDO CAETANO, ANTHONY CAETANO, JENNIFER, CAUDRON, TRACY CHASE, NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW,, CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS, SANDRA COLE, JENNIFER, COMIN, ANTHONY COMMISSO, TANYA DOCANTO CORDEIRO, ESTERINA, COSTA, ROCCO COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD, COUTURIER, WAYNE COWAN, KENTON CROOK, MICHAEL CURRIE, SELENA, CVITAN, MARK DAGGETT, MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA, DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH, ANTHONY DEROSE,, LORRAINE DESCHAMPS, GISELE DESHARNAIS, KAREN DESROSIERS, JOHN, DEVINE, SUSAN DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM, BRANDY, DUPAS, TERESA ELLISON, JOHN EMMANOUIL, JOHANNA EMMANOUIL, SHELLEY, ESCOBAR, JOY ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA, SHERRY, FERREIRA, PAXTON FIRTH, MICHELINE FLEURY, SARAH FRANGIONE, ERIN, FULLER, MICHAEL GAIREY, JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE, GOW, JAYDE GRAVEL, MICHAIL GRIGORATOU, URVASHI GURUNG, RYAN,

HAMER, CHARLENE HANSON, JASMIN
HARRISON, CARLY HART, TAMMY HAYES,,
JAYSON PETER JAMES HEIDEBRECHT, DENISE
HERBERT, JORGIE HIDALGO,, TIMOTHY
HIEBERT, DONNA HISCOCK, DENISE HOHN,
ELAINA HUDYMA,, KATHRYN (KATIE) HUNT,
TANYA HUTCHINSON, ZDZISŁAW JABŁOŃSKI,
MARTINE, JARRY, CARLA JENKINS, STEPHANIE
KATHLEEN JOHNSTON, NICHOLAS, JOHNSTON,
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ANNA MARRO, DEVAN MARSHALL, JUDY
MARTENS, JOSYANNE MARTIN, JENNA MATHIES,
TRACEY, MATLOCK, DANIEL MATTI, WILLIAM
GRANT MAYER, BOZENA MAZUR, DAWN,
MCFARLANE, MARGARET MCGEACHIE, CHRIS
MCGRATH, LUCAS MCIVOR,, KAREN MCQUADE,
SZILVIA MERTL, ROCCO MESSERE, ANNA
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LAWRENCE (LARRY) MILLSON, SERGIO A
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RACHEL MULLARKEY, PAUL NAHIRNIAK,, DIDI
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CHERISE O'CONNOR, GERALDINE OLSON, MARC
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PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MARCH 4 - 5, 2024

ORDER AND REASONS: COUGHLAN A.J.

DATED: MARCH 13, 2024

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