

FEDERAL COURT OF APPEAL

BETWEEN:

SHAUN RICKARD and KARL HARRISON

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at 90 Sparks St., Ottawa, ON K1A 0H9.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

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

**IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR
ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

November 18, 2022

Issued by: **Duong, Rebecca** Digitally signed by
Duong, Rebecca
Date: 2022.11.21
16:42:26 -05'00'

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APPEAL

THE APPELLANTS APPEAL to the Federal Court of Appeal from the order of Associate Chief Justice Gagne by which the Court granted the Respondent's motion to strike the Application for judicial review bearing docket number T-1991-21.

THE APPELLANTS ASK for:

- a) An Order that the decision of Associate Justice Gagne dated October 20, 2022 be set aside;
- b) An Order directing the Applicants' Application proceed to a hearing on the merits; and,
- c) Any other Order that this Honourable Court considers fair and appropriate.

THE GROUNDS OF APPEAL are as follows:

1. This appeal arises out of the Applicants' constitutional challenge of various Ministerial Orders made by the Ministry of Transport that required Canadian citizens and residents to be vaccinated against Covid-19 as a precondition to access and use federally-regulated transportation services (the "Mandatory Vaccine Requirement").
2. On December 24, 2021 the Applicants filed an Application with the Federal Court of Canada requesting various declarations acknowledging the unconstitutionality of the Mandatory Vaccine Requirement (the "Application").
3. On June 20, 2022, the Minister of Transport announced that the Mandatory Vaccine Requirement would be temporarily suspended.
4. Prior to the Application being heard on its merits, the Attorney General brought a motion to dismiss the Application on the basis that the issues raised therein had become moot.
5. The motion was heard, in person, before Associate Chief Justice Gagne on September 21, 2022. On October 20, 2022, Associate Chief Justice Gagne dismissed the Application with reasons to follow; her Honour's reasons were subsequently delivered on October 27, 2022.

6. The Applicants respectfully submit that Associate Chief Justice Gagne made the following errors:

- a. Associate Chief Justice Gagne erred in fact or law and fact in deciding that comments made by Ministers including the Minister of Transport and Minister of Intergovernmental Affairs threatening to re-implement the Mandatory Vaccine Requirement for travel, did not amount to a “live controversy” concerning the Mandatory Vaccine Requirement;
- b. Associate Chief Judge Gagne erred in fact or fact and law by concluding that the Applicants sought declarations with respect to the Mandatory Vaccine Requirement in a “vacuum”. To the contrary, the declarations of constitutional invalidity were brought on a mature, comprehensive evidentiary record and the Applicants were not asking whether any future Ministerial Order would be unconstitutional but whether the Ministerial Order that had been enacted, implementing the Mandatory Vaccine Requirement, was unconstitutional;
- c. Associate Chief Justice Gagne erred in fact by concluding all government measures have been driven by the evolution of the situation and scientific knowledge, and lacked an evidentiary foundation for this conclusion;
- d. Associate Chief Justice Gagne erred at law by concluding that declaratory relief, in and of itself, cannot sustain an otherwise moot issue;
- e. Associate Chief Justice Gagne erred by concluding that a declaration as to the constitutionality of public health measures that suspended Applicants’ mobility rights would have no “practical utility” for the Applicants;

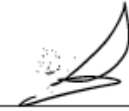
- f. Associate Chief Justice erred in fact by concluding that the travel mandates reflected or were driven by a “particular epidemiological point in the pandemic” and further by suggesting and/or concluding that such mandates would only be re-introduced if such “exceptional circumstances” are “exactly replicated” in the future;
- g. Associate Chief Justice Gagne erred in law by failing to consider whether the Mandatory Vaccine Requirement created an impermissible conflict between the rights and freedoms granted under section 6 and section 7 of the *Canadian Charter of Rights and Freedoms*, and presented a live controversy requiring judicial determination; and/or,
- h. Associate Chief Justice Gagne erred in law or fact and law by failing to consider, or, alternatively, by failing to provide reasons for concluding that there was no important public interest in dedicating judicial resources to decide whether the Mandatory Vaccine Requirements were constitutional.

7. *Federal Courts Act*, R.S.C., 1985, c. F-7, Sections 27(1), 57(3)

8. *Federal Court Rules*, SOR/98-106, Part 6.

9. Such further and other grounds as the Appellants may advise and this Honourable Court may permit.

10. The Appellants propose that this appeal be heard in the City of Ottawa, in the Province of Ontario.



PRESVELOS LAW LLP

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November 18, 2022