

FEDERAL COURT OF CANADA

BETWEEN:

SHAUN RICKARD AND KARL HARRISON

Applicants

-and-

HER MAJESTY THE QUEEN, as represented by ATTORNEY GENERAL OF CANADA and
TRANSPORT CANADA

Respondents

NOTICE OF APPLICATION

APPLICATION PURSUANT TO SECTIONS 61(2), 69, AND 300 OF THE *FEDERAL COURTS RULES* AND SECTION 57.1 OF THE *FEDERAL COURTS ACT*

TO THE RESPONDENTS:

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

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

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

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

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

December 24th, 2021

Issued by:
Address of local office:

Federal Court of Canada
180 Queen Street West
Toronto, Ontario
M5V 1Z4

TO: MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA
c/o Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: MINISTER OF JUSTICE AND SOLICITOR GENERAL OF ALBERTA
c/o Director
Constitutional and Aboriginal Law, Legal Services Division
Ministry of Justice and Solicitor General
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AND TO: ATTORNEY GENERAL OF BRITISH COLUMBIA
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AND TO: ATTORNEY GENERAL OF NEW BRUNSWICK
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- AND TO: **ATTORNEY GENERAL OF NEWFOUNDLAND**
Office of the Minister
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- AND TO: **MINISTER OF JUSTICE FOR NUNAVUT**
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- AND TO: **ATTORNEY GENERAL OF NOVA SCOTIA**
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- AND TO: **ATTORNEY GENERAL OF NORTHWEST TERRITORIES**
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- AND TO: **ATTORNEY GENERAL OF ONTARIO**
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- AND TO: **ATTORNEY GENERAL OF PRINCE EDWARD ISLAND**
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- AND TO: **ATTORNEY GENERAL OF QUEBEC**
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- AND TO: **ATTORNEY GENERAL OF SASKATCHEWAN**
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Rm. 355, 2405 Legislative Drive
Regina, Saskatchewan S4S 0B3
- AND TO: **MINISTER OF JUSTICE OF YUKON**
Main Administration Building
2071 2nd Ave.
Whitehorse, Yukon Y1A 2C6

APPLICATION

1. The Applicants make an Application for the following:
 - a. Declaration that Sections 17.1 – 17.3 and 17.13 of the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, NO. 49*, made pursuant to the *Aeronautics Act*, violate and are contrary to Sections 6(1),(2), 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) in a manner that cannot be saved by Section 1 of the *Charter*.
 - b. Declaration that the impugned provisions of *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 49*, are unconstitutional and of no force or effect;
 - c. Declaration that Sections A and C of the Ministerial Order (MO 21-09) made pursuant to Section 32.01 of the *Railway Safety Act*, R.S.C. 1985, c. 32, *Vaccination Mandate for Passengers – Phase 2* violate and is contrary to Sections 6(1),(2), 7 and 15 of the *Charter* in a manner that cannot be saved by Section 1 of the *Charter* and is unconstitutional;
 - d. Declaration that the Respondents, by virtue of their legislative enactments and exercise of statutory authority in question under the impugned laws and regulations restricting domestic and international travel, violate the Applicants’ *Charter* rights;
 - e. Declaration that the Respondents failed to apply the least intrusive or proportionate means by which to attempt to achieve its objective, namely to “deal with the significant risk, direct or indirect, to aviation safety or the safety of the public” and to protect the “safety of persons and property transported by railways and the safety of other persons and other property”, and that the current regulations are grossly disproportionate having regard to its absolute impact on the Applicants’ constitutional rights and liberties.
 - f. An Order made pursuant to Section 24(1) of the *Charter* and/or Section 52(1) of the *Constitution Act, 1982*, that the impugned provisions of the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 48*, be struck for failing to comply with the *Charter*;
 - g. An Order made pursuant to Section 24(1) of the *Charter* and/or Section 52(1) of the *Constitution Act, 1982*, that the impugned sections of the Ministerial Order (MO

21-09) made pursuant to Section 32.01 of the *Railway Safety Act*, R.S.C. 1985, c. 32, *Vaccination Mandate for Passengers – Phase 2*, be struck for failing to comply with the *Charter*;

- h. In the alternative, an Order that the impugned regulations and Ministerial Orders include recognition of natural immunity or permit travelers to show proof of a negative PCR test before travel.
 - i. An Order that there be no costs in this Application given the compelling public interest nature of the issues raised herein; and,
 - j. Such further and other relief pursuant to the *Charter*, the *Constitution Act* or otherwise, as counsel may advise, and this Honourable Court deem just.
2. The grounds for this Application are as follows:
- a. Shaun Rickard is an individual and a Permanent Resident of Canada who resides in the Province of Ontario.
 - b. Karl Harrison is an individual and a Canadian citizen who resides in the Province of British Columbia.
 - c. Neither Mr. Rickard nor Mr. Harrison have received a COVID-19 vaccine as presently defined by the impugned Ministerial Orders and regulations;
 - d. On August 13, 2021, the Federal Government of Canada announced that Canadian citizens who have not received a COVID-19 vaccine, as accepted by the Government of Canada, will be unable to travel, by aircraft or railway, both domestically and abroad to other countries, with limited exceptions for circumscribed medical or religious reasons (the “**Travel Restrictions**”). According to the Government of Canada:
 - ... travellers in the federally regulated air and rail sectors will need to be vaccinated with a COVID-19 vaccine accepted by the Government of Canada for the purpose of travel. After extensive consultations, Transport Canada issued orders and guidance to airlines and railways to implement the vaccination requirements for travellers, which came into effect at 3 AM (EDT) October 30, 2021.
- The vaccination requirements apply to all travellers, 12 years of age plus four months, who are:

Air passengers flying on domestic, trans-border or international flights departing from most airports in Canada; and
Rail passengers on VIA Rail and Rocky Mountaineer trains.
As of November 30, 2021, a valid COVID-19 test will no longer be accepted as an alternative to vaccination for travel within Canada. To take a flight or a train, travellers must be fully vaccinated with one of the expanded list of vaccinations unless they qualify for a limited exemption to this requirement...

- e. The Travel Restrictions apply to all federally regulated travel including aircrafts, trains, and ships.
- f. The Applicant, Mr. Rickard, had a planned trip to the United Kingdom to visit his father who is suffering from late-stage dementia and is experiencing a severe decline in mental and physical function. On account of the Travel Restrictions Mr. Rickard is now denied the ability to travel outside of Canada, regardless of whether he tests negative for SAR-CoV-2.
- g. The Applicant, Mr. Harrison, had planned to also travel to the United Kingdom to visit his 84-year-old mother. Additionally, Mr. Harrison had plans to travel within Canada using Via Rail and can no longer do so on account of the Travel Restrictions, regardless of whether Mr. Harrison tests negative for SAR-CoV-2. Furthermore, Mr. Harrison requires to travel for work-related purposes. The government's existing Travel Restrictions prevent him from doing so.
- h. The Applicants state that the Travel Restrictions extinguish their freedom to move within and outside of Canada, contrary to the *Charter*.
- i. The Government of Canada's Travel Restrictions appear to be based on Respondents' unsubstantiated assumption that passengers who have not received a Covid-19 vaccine, as presently defined by the impugned Ministerial Orders and regulations, pose a significant health and safety risk to passengers who have received a Covid-19 vaccine, as presently defined by the impugned Ministerial Orders and regulations, in that, they allegedly increase the likelihood of transmitting the etiological agent known as SAR-CoV-2 which, in turn, poses a risk to the health care system, at large.
- j. The Applicants plead that the impugned provisions and legislation are overly broad, not supported by cogent scientific or medical evidence and entail consequences

grossly disproportionate to the government's currently stated objective. Furthermore, the impugned legislation has arbitrarily omitted alternative, reasonable measures to protect passengers against the etiological agent known as SAR-CoV-2, such as requiring a negative PCR test before boarding a plane or train that is regulated by the federal government.

- k. Moreover, the Respondents continue to re-define the definition of “vaccinated” in the context of the COVID-19 pandemic such that it is becoming subject to a series of conditions and qualifications that have no relevance to the COVID-19 vaccine, itself. For instance, recently the Respondents have expanded the definition of “vaccinated” to include the following conditions:
 - i. Within the last 14 days, the traveler has not been in a listed country with Canadian COVID-19 Omicron restrictions; and,
 - ii. Has no signs or symptoms of COVID-19.
- l. The Applicants further state that the Respondents continue to arbitrarily change travel restrictions in response to new “variants” of the etiological agent known as SARS-CoV-2; most recently by requiring travelers who have received a Covid-19 vaccine, as presently defined by the impugned Ministerial Orders and regulations, to quarantine if they have been in a country other than Canada and the United States within 14 days prior to entry to Canada. Such measures continue to change on a day-by-day basis leaving open the possibility of further, restrictive requirements when entering Canada from another country.
- m. The Applicants state that the ability to freely move within Canada, as well as into or out of Canada, is a fundamental democratic and human freedom that should only be curtailed in the clearest and most exceptional of circumstances, which is not met with the current COVID-19 pandemic.
- n. The Applicants state that the Travel Restrictions cannot be justified as a matter of sound public health policy.
- o. This Application is brought in an effort to constitutionally rebalance the excess exercise of government authority in restricting and impeding core civil liberties and *Charter* rights in a manner that is disproportional and that fails to adopt less

intrusive and restrictive alternatives that are open to the Respondent, relative to travel.

- p. The Applicants have personal and private standing to bring the within Application on account of the fact that their personal *Charter* rights and freedoms have been violated by the Respondents.
 - q. The Applicants plead and rely upon the following:
 - i. The *Federal Court Act*;
 - ii. *Federal Court Rules*;
 - iii. *Constitution Act*, 1982; and,
 - iv. *Canadian Charter of Rights and Freedom*, s. 7, Part 1 of the *Constitution Act*, 1982.
3. The Application will be supported by the following materials:
- a. The Affidavit of Shaun Rickard and the exhibits attached thereto;
 - b. The Affidavit of Karl Harrison and the exhibits attached thereto;
 - c. The Affidavit of Dr. Joel Kettner and the exhibits attached thereto;
 - d. The Affidavit of Dr. Jennifer Grant and the exhibits attached thereto; and,
 - e. Such further and other material and evidence as counsel may advise and this Honourable Court deem just.

December 24, 2021



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SOR/2021-151, s. 22