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Court File No.

FEDERAL COURT
PROPOSED CLASS PROCEEDING

B E T W E E N:

(Court Seal)

STACEY HELENA PAYNE, JOHN HARVEY and LUCAS DIAZ MOLARO

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT: HIS MAJESTY THE KING

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.

October 4, 2023

Issued by:

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver BC V7Y 1B6

TO: His Majesty the King
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa ON K1A 0H8

CLAIM

RELIEF SOUGHT

1. The Plaintiffs, Stacey Helena Payne, John Harvey, and Lucas Diaz Molaro, claim on their own behalf and on behalf of a proposed class of unionized employees of the Federal Government, who have been subjected to the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, and as a result have had a unilateral term and condition of employment inserted into their employment contracts, leading to a breach of their employment contracts. ("Class" or "Class Members", to be further defined in the Plaintiffs' application for certification):
 - a. An order certifying this action as a class proceeding pursuant to Rules 334.16 and 334.17 of the Federal Court Rules, SOR/98-106;
 - b. An order pursuant to Rules 334.12, 334.16 and 334.17 of the Federal Court Rules appointing the Plaintiffs, or, alternatively, one of the Plaintiffs, as the representative Plaintiff(s) for the Class;
 - c. General damages plus damages equal to the cost of administering the plan of distribution;
 - d. 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;
 - e. General damages for Misfeasance in Public Office;
 - f. Exemplary and punitive damages for Misfeasance in Public Office;

- g. Damages pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11, s. 24(1) (the "Charter");

- h. A declaration that the Treasury Boards conduct in issuing the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* violates the Plaintiffs' and the Class Members' rights to freedom of association to s.2(d) of the Charter, and this violation is not demonstrably justifiable under section 1 of the *Charter*;

- i. Pre-judgment and post-judgment interest;

- n. Costs; and

- o. Such further and other relief as this Honourable Court may deem just.

Nature of this Action

1. On October 6, 2021, pursuant ss. 7 and 11.1 of the *Financial Administration Act*, the Treasury Board of Canada ("Treasury Board") issued the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* ("RCMP") ("the Policy").

2. The Policy required all Deputy Heads of Core Public Administration and the RCMP to implement the Policy on departments listed under *schedules I and*

IV of the Financial Administration Act on employees as defined under as defined in *sections 7 and 11 of the Financial Administration Act* and included the following regardless of whether they work on-site or telework (full time or part-time):

- a. Indeterminate employees;
- b. Determinate employees;
- c. Members and reservists of the Royal Canadian Mounted Police;
- d. Internationally based public service employees;
- e. Casual workers;
- f. Students;
- g. Visiting scientists working in Government of Canada laboratories;
- h. Cadets, enrolled in the Royal Canadian Mounted Police Cadet Training Program, and other cadets/trainees (ab initio) enrolled in any federal public service training college or academy; and
- i. Interchange Canada participants and volunteers.

(the “Federal Public Service Vaccination Mandate”).

3. The Plaintiffs plead that the Policy violated the Plaintiffs’ and Class Members’ rights under s. 2d of the *Charter* and was not saved by s. 1, such pleading is further particularized below.
4. The Plaintiffs plead that in issuing the Policy, the Treasury Board committed the tortious conduct of Misfeasance in Public Office towards the Plaintiffs’ and Class Members’, such pleading is further particularized below.

The Parties and the Class

5. The Plaintiff Stacey Helena Payne (“Payne”) had been an employee of the Department of National Defence (“DND”) as a graphic design technician since 2018 and maintained an exemplary and unblemished record of employment until her suspension from employment on December 15, 2021.

Payne was suspended pursuant to the Policy. Payne was a member of the Public Service Alliance of Canada (“PSAC”) and at all material times her employment was governed by the PSAC Technical Services Agreement between PSAC and Treasury Board. Payne is a resident of New Brunswick.

6. The Plaintiff John Harvey (“Harvey”) had been an employee with Correctional Service Canada (“Corrections”) serving as Corrections Officer since 2008 and maintained an exemplary and unblemished record of employment until his suspension on March 11, 2022. Harvey was suspended pursuant to the Policy. Harvey is a member of the Union of Canadian Correctional Officers (“UCCO”) and at all material times his employment was governed by the UCCO- Treasury Board collective agreement. Harvey is a resident of Saskatchewan.

7. The Plaintiff Lucas Diaz Molaro (“Molaro”) was an employee of the Federal Economic Development Agency for Southern Ontario (“FEDA”) and served as Monitoring and Verification Officer. Molaro has been an employee of FEDA since 2019 and maintained an exemplary and unblemished record until his resignation October 25, 2021. Molaro resigned pursuant to the Policy. Molaro was a member of the Professional Institute of the Public Service of Canada (“PIPSC”) and at all material times his employment was governed by the PIPSC- Treasury Board collective agreement. Molaro is a resident of Ontario.

8. The Class (to be defined by the Court) is intended to include all existing unionized employees and all persons hired within the core public administration of the Federal public service and the RCMP during the Class Period who were either subject to or subjected to discipline, including but not limited to suspension of employment and termination, pursuant to the Policy as a result of failing to disclose their vaccination status or failing to become vaccinated (“Class Members”). The Class Period is October 6, 2021, (when

the *Policy* came into force) to the date this action is certified as a class proceeding.

9. The Defendant, His Majesty the King ("Canada"), is liable for the acts, omissions, negligence and malfeasance of the employees, agents and management of Treasury Board, pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c C-50.

Standing

10. The Plaintiffs and Class Members assert both private and public interest standing to bring this claim.
11. The Plaintiffs and Class Members have private interest standing because they are directly affected by the conduct of the Treasury Board in issuing the *Policy* and have been subjected to ensuing harm as a result of such conduct.
12. The Plaintiffs and Class Members also have public interest standing. They raise a serious justifiable issue of public importance respecting the constitutionality of the *Policy* which has created, contributed to, and sustained a deprivation of individuals' rights guaranteed under the Charter, s. 2d.
13. The Plaintiffs and Class Members have a real stake in the Treasury Boards' conduct and are both directly impacted and genuinely interested in the resolution of this claim.
14. This claim advances a reasonable and effective method of bringing the issues before the court in all relevant circumstances. As a result of the conduct of the Treasury Board, including but not limited to the enactment of the *Vaccine Policy* which was imposed as a contractual term within their employment agreement, impacted many individuals as a result, which included a breach to their employment contract and their Charter rights were infringed. These abhorrent acts committed by the Treasury Board also impacted the Plaintiff

and the Class's resources to bring forward such a claim.

Background on the Policy

15. On October 6, 2021, pursuant to ss. 7 and 11.1 of the *Financial Administration Act*, the Treasury Board issued the *Policy*.

16. The stated objectives of the *Policy* were, inter alia:

- a. "To take every precaution reasonable, in the circumstances, for the protection of the health and safety of employees. Vaccination is a key element in the protection of employees against COVID-19".
- b. "To improve the vaccination rate across Canada of employees in the core public administration through COVID-19 vaccination".
- c. "Given that operational requirements may include ad hoc onsite presence, all employees, including those working remotely and teleworking must be fully vaccinated to protect themselves, colleagues, and clients from COVID-19."

17. According to Treasury Board the expected results of the *Policy* were inter alia:

- a. "All employees of the core public administration are fully vaccinated unless accommodated based on a certified medical contraindication, religion, or another prohibited ground for discrimination as defined under the *Canadian Human Rights Act*".

18. As per the *Policy*, Deputy Heads of departments of core public administration and the RCMP were responsible for, inter alia:

- a. Implementing this policy within their organization.
- b. Complying with directions received from the Treasury Board, the President of Treasury Board, the Secretary of the Treasury Board and other members or the Chief Human Resources Officer regarding how

to implement this policy.

- c. Ensuring that their organization complies with any oversight, systems, information requirements, or reporting established by the Chief Human Resources Officer regarding the implementation of this policy, including:
 - Collecting and storing data and information regarding vaccine attestations, testing, and testing results in any system prescribed by the Chief Human Resources Officer.
- d. Collecting and storing attestation and consent forms once signed for those unable to use the Government of Canada Vaccine Attestation Tracking System (GC-VATS).
- e. Conducting audits on attestations and consent forms.

19. As per the Policy, employees were responsible for inter alia:

- a. Providing truthful information for the implementation of all aspects of this policy and any procedures, standards, or directives associated with this policy. Failure to do so could constitute a breach of the *Values and Ethics Code for the Public Sector* and may result in disciplinary action.
- b. Disclosing their vaccination and testing status accurately as required by this policy.
- c. Complying with this policy regardless of whether they work onsite, remotely, or telework.

20. As a consequence for non-compliance with the Policy, the Policy stated:

- a. For employees unwilling to be fully vaccinated or to disclose their vaccination status, as per Appendix A, the employer will implement the following measures:
 - Within 2 weeks of the attestation deadline, require

employees to attend an online training session on COVID-19 vaccination;

- At 2 weeks after the attestation deadline:
 - Restrict employees' access to the workplace, off-site visits, business travel and conferences; and,
 - Place employees on administrative Leave Without Pay advising them not to report to work, or to stop working remotely, and taking the required administrative action to put them on Leave Without Pay.

Covid -19 Vaccinations – Preventing Transmission

21. The Policy mandated Covid-19 vaccinations which were approved by Health Canada.
22. Health Canada regulatory approval decisions, product reviews, product monographs, and clinical study data on the Covid-19 vaccines was at all material times available to Treasury Board to inform the development, implementation, and enforcement of the Policy.
23. At the time the Policy was enacted all Health Canada approved COVID-19 vaccinations had filed product monographs which are available to inform the public of the effects of the vaccination. There were six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.
 - a. Pfizer/BioNTech (“Comirnaty”)
 - b. Moderna (“Spikevax”)
 - c. Janssen and Johnson & Johnson (“Jcovden”)
 - d. AstraZeneca (“Vaxsevria”)

e. Medicago (“Covifenz”)

f. Novavax (“Nuvaxovid”)

Each of the COVID-19 vaccines presented above have a Product Monograph.

24. A Product Monograph is a factual, scientific document on a drug product that, devoid of promotional material, describes the properties, claims, indications, and conditions of use for the drug, and that contains any other information that may be required for optimal, safe, and effective use of the drug.
25. The Product Monograph of the Pfizer vaccine, Comirnaty, does not include any information related to the transmission of COVID-19. Prevention of viral transmission is NOT an approved indication for Comirnaty. The word ‘transmission’ or any of its correlates indicating viral conveyance to another person, does not appear in this document and therefore the Plaintiffs plead that the Defendant cannot claim Comirnaty prevents viral transmission of COVID-19 to other people.
26. The Product Monograph of Moderna’s vaccine, Spikevax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim Spikevax prevents viral transmission of COVID-19 to other people.
27. The Product Monograph of VAXZEVRA™, manufactured by AstraZeneca does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim VAXZEVRA™ prevents viral transmission of COVID-19 to other people.
28. The Product Monograph of JCOVDEN™, manufactured by Janssen, does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim JCOVDEN™ prevents viral transmission of COVID-19 to other people.
29. The Product Monograph of COVIFENZ™, manufactured by Medicago does not include any information or direction on the transmission of COVID-19

and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.

30. The Product Monograph of NUVAXOVID™, manufactured by Novavax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim NUVAXOVID™ prevents viral transmission of COVID-19 to other people.

Covid-19 Vaccination – Safety and Risk of Adverse Events

31. On or about March 29, 2021, The National Advisory Committee on Immunization (NACI), recommended immediately suspending the use of the AstraZeneca-Oxford COVID-19 vaccine in Canadians under 55.

32. On June 26, 2021, Health Canada updated the product label for the Vaxzevra vaccine manufactured by AstraZeneca. Health Canada acknowledged that potential side effect of blood clots associated with low levels of platelets following immunization.

33. On November 18, 2020, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials, for the Pfizer and BioNTech Covid-19 vaccination. (“Study 1”).

34. Study 1 showed that of 18,198 individuals in the Vaccination group, 5770 individuals (26.7%) had an adverse reaction.

35. On April 1, 2021, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials. (“Study 2”).

36. Study 2 showed that of 21,923 individuals in the Vaccination group 5241 individuals (23.9%) had a “related adverse event” and 127 (0.6%) suffered “any serious adverse event”.

37. On or about May 1, 2021, Health Canada announced it was stopping distribution of 300,000 doses of the Johnson & Johnson, Jcovden, vaccine to provinces and territories because the regulator had learned the active ingredient was made at a Baltimore facility where an inspection raised

concerns.

38. On or about May 3, 2021 NACI recommended the Johnson & Johnson, Jcovden, shot not be given to anyone under 30 because of the risk of extremely rare blood clots combined with low platelets, a syndrome dubbed vaccine-induced immune thrombotic thrombocytopenia (VITT).
39. Moderna submitted results of one phase III randomized trial in support of the emergency use authorization for their vaccines for use in adults. The Moderna trial exhibited a 6% higher risk of serious adverse events in vaccinated individuals compared to the placebo group. 136 per 10,000 versus 129 per 10,000 – risk difference 7.1 per cent per 10,000.
40. In the Moderna trial Serious Adverse Events of Interests (“AESI”) showed 87 AESI (57.3 per 10,000) were reported in the vaccine group and 64 (42.2 per 10,000) in the placebo group, resulting in a 36% higher risk of serious AESI’s.
41. The Medicigo Covifenz COVID-19 vaccine was authorized on February 24, 2022, for use in Canada under the *Food and Drug Regulations*, however this vaccine was cancelled by the sponsor on March 31, 2023

Misfeasance in Public Office

42. The Treasury Board acting under authority of the Financial Administration Act issued and mandated implementation of the Policy. The Plaintiffs and Class Members plead that Treasury Board acted with reckless indifference or willful blindness in issuing and enforcing the Policy including:
 - a. The Treasury Board had no basis in fact to justify the Policy as a measure to prevent transmission of COVID-19. As such the Plaintiffs’ and Class Members plead that perpetuating the stated objective of the Policy to prevent transmission of Covid-19, Treasury Board was either reckless or willfully ignored the reality of the vaccine in exercising their authority under the Financial Administrations Act, with

foreseeable losses to the Plaintiffs' and Class Members.

- b. Known and unknown potential risk of adverse events associated with the Covid-19 vaccination were either recklessly or willfully ignored and omitted by enactment and enforcement of the Policy under the Financial Administrations Act, with foreseeable losses to the Plaintiffs' and Class Members as a result of non-compliance with the *Policy*.
- c. There was no long-term safety data available to the Treasury Board when enacting and enforcing the Policy on mandatory vaccinations and as such the Policy created a foreseeable and unreasonable risk of harm to the Plaintiffs' and Class Members.
- d. The Plaintiffs' and Class Members plead that as a result of the Treasury Boards actions in enacting and enforcing the Policy on mandatory vaccinations, they suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Treasury Board.

43. The Plaintiffs' and Class Members plead that the Treasury Board in exercising their statutory authority under the Financial Administrations Act committed the tort of Misfeasance in Public Office.

The Charter of Rights and Freedoms

44. The Plaintiffs' and Class Members plead that *s. 2d* of the *Charter* provides for Freedom of association which guarantees the right of employees to meaningfully associate in the pursuit of collective workplace goals, which includes a right to collective bargaining. As such Laws or state actions that prevent or deny meaningful discussion and consultation about working conditions between employees and their employer may substantially interfere with the activity of collective bargaining, as may laws that unilaterally nullify significant negotiated terms in existing collective agreements.

45. The Plaintiffs and Class Members all had freely negotiated, valid, and binding contractual employment agreements with the Treasury Board.
46. None of the Plaintiffs or Class Member contractual employment agreements called for disclosure of Covid-19 vaccination status nor mandatory Covid-19 vaccination.
47. The Plaintiffs' and Class Members plead that the Policy was a new term and condition placed upon their employment by the Treasury Board absent collective bargaining, memoranda of agreement, consideration, or consent.
48. The Plaintiffs' and Class Members plead that the imposition by Treasury Board of a new term and condition of employment absent collective bargaining, memoranda of agreement, consideration, or consent violates their protected right under s. 2d of the *Charter*.
49. The Plaintiffs' and Class Members plead that the action of the Treasury Board in imposing a new term and condition of employment absent collective bargaining, memoranda of agreement, consideration, or consent is not saved by s.1 of the *Charter* as the Treasury Board did not possess the requisite justification based upon the objectives espoused by the Policy.

Aggravated and Punitive Damages

50. The Plaintiffs and Class Members plead that Defendants, by virtue of the conduct included in this Statement of Claim have inflicted mental and emotional distress by engaging in conduct:
 - a. that constitutes conduct that is flagrant and outrageous;
 - b. that was calculated to or foreseeably produced harm and produce the consequences that flowed from the Policy; and
 - c. that resulted in injury to the Plaintiffs and Class members.
51. The Plaintiffs and Class Members plead that the conduct of the Defendants as outlined in this Statement of Claim demonstrates a wanton, high-handed and callous disregard for the interests of the Plaintiffs and Class Members.

This conduct merits an award of aggravated and punitive damages.

Remedies

- a. The Plaintiffs and Class Members repeat the claims for relief sought set out in paragraph 1 above.

52. The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Umar A. Sheikh

October 5, 2023

SHEIKH LAW

PO Box 24062 Broadmead RPO
Victoria BC V8X 0B2

Umar A. Sheikh
usheikh@sheikhlaw.ca
Tel: 250-413-7497

Angela Wood
awood@sheikhlaw.ca
Tel: 587-893-6369

Solicitors for the Plaintiffs