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**FEDERAL COURT**

BETWEEN :

**THE HONOURABLE MAXIME BERNIER**

Applicant

and

**THE MINISTER OF TRANSPORT AND THE  
ATTORNEY GENERAL OF CANADA**

Respondents

APPLICATION UNDER Sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and Rules 300(a) and 317 of the *Federal Courts Rules*, SOR/98-106

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**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

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## APPLICATION

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**THE APPLICANT SEEKS JUDICIAL REVIEW**, pursuant to sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 53 ("**Order**") made by the Minister of Transport on January 28 2022.

1. With few exceptions, the Order prohibits persons who are not "fully vaccinated" for Covid-19 from travelling by air. This results in discrimination and a clear violation of the constitutionally protected rights of Canadians.
2. Scientific evidence has repeatedly confirmed that Covid-19 vaccines do not stop infection or transmission of the virus known as SARS COV-2, or variants such as Omicron.
3. By restricting the mobility of citizens based on their vaccination status, the Order violates Applicant's rights to participate in democratic discussions and the electoral process.
4. The Order does not relate to any significant risk to aviation security or public safety in an aviation context.
5. This application for judicial review ("**Application**") is a matter of constitutional and quasi-constitutional law, and the relief sought is based on section 52 of the *Constitution Act*, 1982, section 24(1) of the *Canadian Charter of Rights and Freedoms* ("**Charter**") and section 2 *in limine* of the *Canadian Bill of Rights*, SC 1960, c. 44 ("**Canadian Bill of Rights**");
6. Sought remedies include:
  - a. A writ of *certiorari* setting aside the Order;
  - b. Declarations of unconstitutionality and inapplicability of the Order;
  - c. A prohibition order against any possible decision similar to the Order with respect to the vaccination status of persons.

**APPLICANT SEEKS** the following relief:

7. A judgment invalidating the Order or :
  - a. declaring the Order or, in the alternative, sections 1(6) and (7), 2(3) and (4), and 17.1 to 17.17 ("**Vaccine Clauses**") to be constitutionally invalid or unenforceable, and
  - b. Declaring that the Order or, in the alternative, its Vaccine Clauses

violate the rights guaranteed to the Applicant by sections 2(b), (c) and (d), 3, 6, 7 and 15 of the Charter without sufficient justification under section 1 thereof;

- c. Declaring that the Order or, in the alternative, its Vaccine Clauses violate section 81.1 of the *Canada Elections Act*;
- 8. In the alternative, a statement that a person with natural immunity to Covid-19 is "fully immunized" within the meaning of the Order or any ruling or standard containing provisions similar to the Vaccine Clauses;
- 9. An order prohibiting the Minister of Transport from making any order or other measure similar to the Order or the Vaccine Clauses that would restrict access to air travel for persons not vaccinated against Covid-19;
- 10. Orders abridging the time for service of this Application and allowing it to proceed on an expedited basis;
- 11. Pursuant to Rule 317 of the *Federal Courts Rules*, the disclosure of relevant information and documents held by the Federal Office;
- 12. An order that the Respondents pay the costs of this Application;
- 13. Such other relief as Applicant may request and this Honourable Court may grant.

**THE REASONS FOR THE APPLICATION** are as follows:

**A) THE PARTIES**

- 14. The Applicant works full time as the leader of the People's Party of Canada, the fifth largest federal political party, based on the number of votes received in the September 2021 general election.
- 15. The Applicant contracted Covid-19 in the fall of 2021 and recovered without harm; he has since returned to normal activities, apparently with no long-term ill effects.
- 16. The Applicant is in good health; he is 59 years old and exercises regularly. He would be at very low risk of serious illness or loss of life if he were to contract Covid-19 again.
- 17. Respondents are:
  - a. Her Majesty the Queen in right of Canada, as represented by the Attorney General of Canada on behalf of the Governor General in Council;
  - b. The Honourable Omar Alghabra, Minister of Transport, and

Transport Canada.

**B) SUMMARY OF THE FACTS**

**a. Origins of the Order**

18. In the months leading up to the release of the Order, the Prime Minister of Canada made vitriolic statements about people who refused the vaccine.
19. On December 16, 2021, the Prime Minister directed the Minister of Transport to require that travellers on commercial flights within and from Canada be vaccinated. The Minister has adopted instruments to address this, the most recent being the Order.
20. On January 28, 2022, the Minister of Transport made the Order under what he considered to be the authority of section 6.41 of the *Aeronautics Act*. The Order came into force on that day and has no expiry date.
21. The Vaccination Clauses require all air travelers to present proof of Covid-19 vaccination to board an aircraft departing from an aerodrome listed in the schedule 1 to the Order.
22. The Order discriminates against an identifiable group (unvaccinated persons for Covid-19) and does not provide exemptions for individuals who have developed a natural immunity to Covid-19 or for those who wish to participate in the democratic process.

**b. Vaccines**

23. Four vaccines are currently licensed in Canada to treat the symptoms of Covid-19: AstraZeneca, Moderna, Pfizer and Johnson & Johnson. These vaccines are still in clinical trials, with completion expected in 2023 or later. None of them prevent infection or transmission of Covid-19.
24. These vaccines can cause severe, even fatal, adverse events, including myocarditis, pericarditis, Bell's palsy, thrombosis, immune thrombocytopenia and venous thromboembolism.
25. Both vaccinated and unvaccinated people can become infected with Covid-19 and transmit it.
26. The chances of recovery from Covid-19 for people under 60 years of age without comorbidities are around 99.997%.

**c. Harm to the Applicant**

27. The Applicant is well aware of the derogatory and hateful comments made about unvaccinated people by many Canadian media and political

personalities. The Order, too, is a vehicle for the discrimination that the Applicant is now experiencing.

28. The Applicant has chosen not to be inoculated against Covid-19 because of the risks associated with a biologic drug that he believes is experimental, hastily developed, and whose short- and long-term effects have yet to be determined. He prefers to develop natural immunity and accepts the risks associated with this decision. The Applicant has proof that he developed antibodies through prior infection to Covid-19.
29. The Applicant has reviewed the potential side effects of the vaccine listed by Health Canada; he has legitimate concerns about these possible adverse consequences. The Applicant is not morally opposed to vaccination per se; if he were very old or frail, he may have taken the vaccine.
30. As a party leader, the Applicant is required to reach thousands of people each year and to participate in various political, intellectual and charitable activities in all regions of the country. Travel other than by air is only reasonably feasible within a relatively limited radius of his residence in Quebec.
31. In 2021, the Applicant flew more than 79,000 km in Canada for the purpose of his work.
32. Neither the Applicant nor his party can afford to charter a plane for him.
33. Traveling such distances by car would take much longer than the Applicant's schedule allows and would expose him, at least on the road, to relatively dangerous weather and safety conditions, and place him at a disadvantage relative to other federal candidates.
34. The Order makes access to air transport conditional on the vaccination of the passenger. It provides for rare possibilities of exemption, none of which is available to the Applicant.
35. Because he is not vaccinated, the Applicant is virtually unable to travel across Canada. By prohibiting him from flying, the Order impedes the Applicant's work and prevents him from fully participating in the democratic life of his party and his country.

### **C) SUMMARY OF THE LEGAL ARGUMENTS**

36. Ironically, it is at a time when the Applicant's lone voice against overzealous health care is being raised that his political opponents are using the pretext of Covid-19 to prevent him from playing his role in Canadian democracy.
37. The Order's requirement that Canadians be vaccinated to fly does not pose

a "significant risk – direct or indirect – to aviation security or public safety" within the meaning of section 6.41 of the *Aeronautics Act*. It has no significant impact on the likelihood of a traveller introducing or spreading Covid-19.

38. The aerodromes and aircraft environment does not present any particular or increased risk for the spread of Covid-19.

39. The Order and its Vaccine Clauses violate Applicant's rights under the Charter:

- a. Sections 2 (b), (c) and (d), and 3: requiring the Applicant to undergo vaccination for air travel and not providing any exception or exemption for participation in party activities, democratic discussions and the electoral process;
- b. Article 6: by depriving the Applicant of the only real means of travelling long distances, especially interprovincially, under reasonable conditions;
- c. Article 7: by violating the Applicant's rights to liberty and security, preventing him – by coercive, arbitrary, excessive and grossly disproportionate means – from moving around his vast country, except by submitting to vaccination against his will.
- d. Article 15: his right to equality, effectively labeling him as not "fully vaccinated", treating him as a second-class citizen, even a pariah, while allowing "fully vaccinated" Canadians to fly, even though these two arbitrarily created categories differ little, if at all, in the risks they pose to aviation safety and security. The Vaccine Clauses seek to punish the Applicant and the unvaccinated for exercising their fundamental rights.

40. The Order is not justified under section 1 of the Charter. It does not serve the public interest - unless one equates the public interest with the media strategy of certain governments - and is not a rational means of pursuing the stated objective. The Order does not minimally impair the Applicant's rights, and the impairment is not proportionate to the expected benefits, if any.

41. The Order and its Vaccine Clauses are inconsistent with the Applicant's rights to equality before the law, liberty and security of the person, and freedom of speech, assembly and association as recognized by section 1 of the Canadian Bill of Rights.

42. The Order violates section 81.1 of the *Canada Elections Act* through its interference with the right to participate equally in the democratic process.

43. The Order did not follow due process. It is so far outside of section 6.41 of the *Aeronautics Act* that it is in fact a form of disguised legislation, bypassing parliamentary procedure and usurping the function of Parliament.

44. Any other means that Applicant's counsel may submit and that this Honourable Court may permit.

**D) LEGISLATION INVOKED**

45. Applicant relies on the following:

- a. *Canadian Charter of Rights and Freedoms*;
- b. *Constitution Act, 1982*;
- c. *Constitution Act, 1867*;
- d. *Canadian Bill of Rights*, SC 1960, c. 44;
- e. *Aeronautics Act*, R.S.C. 1985, c. A-2;
- f. *Canada Elections Act*; SC 2000, c. 9;
- g. *Interim Order No. 53 respecting certain civil aviation requirements due to COVID-19*;
- h. Such other authorities and laws as Applicant's counsel may present and this Honourable Court may accept.

**E) EVIDENCE IN SUPPORT OF THE APPLICATION**

46. Applicant intends to file, with attachments or enclosures:

- a. His own sworn statement;
- b. Other affidavit evidence, including expert and factual witness testimony.
- c. Such other evidence as Applicant's counsel may propose and this Honourable Court may permit.

**F) REQUEST FOR DOCUMENTS TO THE FEDERAL OFFICE**

47. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicant requests that the Minister of Transport, Transport Canada, the Attorney General of Canada and the Governor in Council provide certified copies of the following information and documents:



- a. All information relating to the immunization status of persons upon which the Minister of Transport would have relied in making the Order;
- b. All information and documents obtained or developed by the Minister of Transport in the course of communications with any person or body that the Minister considered "appropriate to consult", as defined in section 6.41(1.2) of the *Aeronautics Act*;
- a. All documents, including, but not limited to, research, analyses, policy papers, background reports, studies, proposals, presentations, reports, memoranda, opinions, advice, letters, e-mails and any other communications that have been prepared, commissioned, reviewed or received by the Government of Canada in relation to *Interim Order No. 53 respecting certain civil aviation requirements as a result of the COVID-19*;
- b. All correspondence, letters, emails, and other communications related to *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 53*, between Respondents and :
  - i. The Governor General in Council;
  - ii. The Prime Minister of Canada;
  - iii. The Privy Council Office;
  - iv. Department of Justice;
  - v. Global Affairs Canada;
  - vi. Crown-Aboriginal Relations and Northern Affairs Canada;
  - vii. The provinces and territories of Canada, including the Minister of Transportation of each province and territory;
  - viii. Elected, appointed or hereditary representatives of the First Nations and Aboriginal peoples of Canada ;
  - ix. Canada's municipalities.

**G) EXPEDITED HEARING**

48. Pursuant to Rule 385 of the *Federal Courts Rules*, and in light of the need for an expeditious resolution of this dispute, the Applicant requests that the matter be subject to orders that will allow for expedited proceedings and trial.

Montreal, February 10 2022

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**LIS S.A.**  
**(Mtre. Samuel Bachand)**

**Plaintiff's Counsel**

**ADDRESSEES:**

**À : The Administrator of the Federal Court**

**AND TO : Attorney General of Canada**  
Counsel for the Respondents