



June 22, 2022

VIA EMAIL

Prothonotary Tabib  
c/o Federal Court Registry  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5h Floor  
Ottawa, Ontario K1A 0H9

Dear Prothonotary Tabib:

**RE: The Honourable A. Brian Peckford et al v. AGC, T-168-22, et al  
Response to Canada's Adjournment Motion**

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We strongly oppose the Department of Justice Canada's request to adjourn the September 2, 2022, deadline to file the Respondent's record and by extension reschedule the hearing scheduled to commence on September 19, 2022, for the reasons set out below.

### Aspects of Orders Only Suspended

Canada's suggestion that there is no urgency or that the Interim Orders<sup>1</sup> (the "Travel Vaccine Mandates") "will no longer be in effect" is misleading.

Canada's June 14, 2022, announcement says that certain aspects of the Travel Vaccine Mandates are only "suspended": "Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees" (attached). The announcement includes the following statement:

The Government of Canada will not hesitate to make adjustments based on the latest public health advice and science to keep Canadians safe. This could include an up-to-date vaccination mandate at the border, the reimposition of public service and transport vaccination mandates, and the introduction of vaccination mandates in federally regulated workplaces in the fall, if needed. [Emphasis added]

Canada's backgrounder to the announcement uses the word "suspend" and its derivations seven times (attached). The Travel Vaccine Mandates have not ended as suggested by Canada's counsel.

Furthermore, it is the position of these Applicants that this request for adjournment is an improper context to argue the continued merit of the matter before the Court. This is a serious topic, with significant impacts and must be afforded a serious discussion. The section of the letter from Ms. Telles-Langdon titled, *No urgency now that impugned measures are repealed*, appears to be substantively expressing that the matter before the Court is moot. To date, Canada has not filed a mootness application. Until such an application is decided on its merits, it is these Applicants' position that any discussion on the merits of a mootness application is premature.

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<sup>1</sup> Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3, and Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 65.

## **Provisions of Orders Remain In Force**

While the vaccine requirement of the Travel Vaccine Mandates has been temporarily lifted, there are other aspects of the Travel Vaccine Mandates that are within the scope of the Applicants' Notice of Application for Judicial Review ("NOA") that remain in place. The Peckford Applicants' NOA argues that the Travel Vaccine Mandates violate section 8 *Charter* rights to privacy by forcing the Applicants to disclose private medical information to be able to board an airplane.<sup>2</sup> The current Interim Order continues to require disclosure of private medical information and has not been suspended.

Moreover, the Interim Order that is in place continues to force air carriers to require unvaccinated Canadian travellers returning to Canada to undergo antigen or other similar forms of Covid-19 testing.<sup>3</sup> The Peckford Applicants' NOA seeks a declaration that "natural immunity to Covid-19", as evidenced by a serology test, be recognized as equivalent to being "fully vaccinated", as defined in the currently in-force Interim Order.

## **National Importance**

This case deals with a matter of national importance: whether Canada breached its *Charter* obligations by imposing the Travel Vaccine Mandates. The evidence in this proceeding to date has confirmed that millions of Canadians' mobility, privacy and other *Charter* rights may have been unlawfully breached by Canada. This is a matter that should be adjudicated as soon as possible for the benefit of all Canadians and certainly before these measures are enacted again. From its outset, the Department of Justice Canada has staffed this case with more lawyers than all of the Applicants combined. The email distribution list includes over 10 government lawyers including several with more than 20-years experience.

## **Circumstances Were Known**

In respect of Ms. Telles-Langdon's hip surgery, we understand that she has been on a surgery-waitlist for a year and recently found out about an August 9, 2022 proposed surgery date. Accordingly, the possibility that the hip surgery would be scheduled at some point during this matter was known to the Department of Justice Canada when this Court issued its case management schedule on May 10, 2022.

## **Alternative Senior Counsel**

In addition, it is our understanding that there are other senior counsel on the case that can stand in for Ms. Telles-Langdon in the event she needs to request a leave of absence in August for surgery. Mr. Gregory Tzemenakis, for example, was called to the Ontario Bar in 2000, and has been involved in the cross examinations of the Applicants' witnesses.

## **Real-time Involvement in Cross Examinations**

We also want to note that the Applicants have ordered the transcripts of the 16 government witnesses on an expedited basis, and at a great financial expense. The transcripts of their witnesses' cross examinations are available to all parties within 4 to 5 days. In addition, multiple counsel from the Department of Justice have attended each of the cross examinations. In other words, they have been collecting real-time information on the evidence followed up by transcripts. Counsel for the Peckford

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<sup>2</sup> See, for example, sec. 2 of Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 65.

<sup>3</sup> See, for example, sec. 13 and 13.1 of Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 65.

Applicants began working on the drafting of our Record as soon as the cross examinations began. There is no reason why the Department of Justice with far more financial and staffing resources could not have done the same.

### **Delay for Official Translation Already Raised**

Canada raised the issue of additional time required for translations services at the May 10, 2022, case conference. It was for that reason Canada was allotted additional time to file the Respondent record (over 6 weeks from receipt of Applicants' records and over 8 weeks from the close of cross-examinations). The Applicants, in turn, have only 20 days to file the Applicants' records from the close of cross-examinations.

### **Burden of Prejudice**

The Federal Court has established in prior jurisprudence that adjournments cause serious inconvenience and expense, and that when the Court has fixed a date for trial or for a hearing, all counsel will be expected to proceed on the date fixed.<sup>4</sup> The Federal Court has determined previously that requests to adjourn will be considered only in the most exceptional circumstances.<sup>5</sup> It is the position of these Applicants that this standard has not been met by Department of Justice Canada. If it is the case that the Department of Justice failed to plan for alternative senior counsel or to not sufficiently resource Canada's case, any prejudice arising from that planning failure should be borne by Canada, not these Applicants. We submit that a matter of internal resourcing is not a valid reason for any delay to the schedule.

These Applicants further submit that the burden of prejudice will be weighed very heavily against the applicants at this time. This matter has moved at an expedited rate and an expedited hearing was set. Time and resources were expended to move this matter on this expedited basis. As of August, 2022, the substance of the matter will be largely complete. To delay this matter in any way, after the majority of the procedural steps were completed on an expedited basis, will cause great prejudice to all the parties that expended the resources and effort to date.

### **Canada Chose Its Witnesses**

The Department of Justice letter complains of "the gruelling schedule on which these matters have proceeded to date". The Peckford Applicants limited its applicants to six representative persons. In contrast, Canada decided to present 16 witnesses of which only 3 had direct involvement in the decisions relating to the Travel Vaccine Mandates. Canada cannot present 16 witnesses knowing there is an expedited timetable and then call it a "punishing schedule".

We are also concerned that the Department of Justice's letter or comments on our recent case management calls could be construed as though the cross examinations are exceeding the time allotted. This is incorrect. Most of the cross examinations have been completed. Most were completed either on time or early. Only a few exceeded the time allotted, and we have all accommodated those additional times required.

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<sup>4</sup> *Canadian Council of Professional Engineers v. Memorial University of Newfoundland*, 1999 CanLII 8500 FC, 1999 CanLII 8500 (FC) | *Canadian Council of Professional Engineers v. Memorial University of Newfoundland* | CanLII, at para 4 [*Canadian Council of Professional Engineers*]

<sup>5</sup> *Canadian Council of Professional Engineers*, *supra*, at para 4, *Parrish & Heimbecker Ltd. v. "Mapleglen" (The)*, 2004 FC 1197 (CanLII), 2004 FC 1197 (CanLII) | *Parrish & Heimbecker Ltd. v. Mapleglen (Ship)* | CanLII, at para 4, *Mason v. Canada (Attorney General)*, 2015 FC 926 (CanLII), 2015 FC 926 (CanLII) | *Mason v. Canada (Attorney General)* | CanLII, at para 19.

Furthermore, throughout June, it has been the Applicants' counsel that have had to complete the extensive work of reviewing the government witnesses' voluminous affidavits and exhibits and then prepare for daily cross examinations. We have all done so without complaint. Yet Canada's role in the cross examinations in June has been limited and the responsibilities have been shared between their other lawyers on the file. They are sitting in and listening in on the cross examinations even though we have made the transcripts available on an expedited basis.

The majority of the "heavy-lifting" of this file will have already been completed by August 9<sup>th</sup>. The cross examinations will have been completed, and the Applicants' Records will have been filed. The other lawyers on the file and all the departments involved are able to assist Ms. Telles-Langdon or any other lawyer that will be charged with the file.

## **Conclusion**

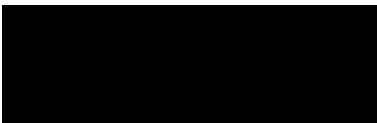
Any existing prejudice has overwhelmingly been on the Applicants' side throughout this matter. Despite this, the Applicants have not requested any deadline extensions. Each Applicant group is responsible for filing their own submissions, and even when combined, the Applicants have infinitely less resources than Canada. The Applicants are engaged in cross examinations everyday in June except for one day. The Applicants are limited to 20 days to file their record, while Canada has over 6 weeks to file their record.

It is the position of these Applicants that Canada is not prejudiced in the matter before the Court. The issues central to this case pertain to a law enacted by Canada, and by extension, Canada has the upper hand regarding the matters that relate to the law. Canada's legal and other resources are incomparably large in relation to those of the Applicants in all respects. The schedule determined by the Court was known and agreed to by all parties, including Canada at all stages of the process. Furthermore, it is our understanding that Ms. Telles-Langdon was aware of the possibility of her surgery before this matter was filed and before the schedule was made. The matter before the Court is of substantial constitutional importance and has an extremely large reach, impairing the rights of millions of Canadians. The application remains a live controversy, is of continued constitutional significance, and has not been deemed otherwise by the Court. It is submitted that a matter of such importance should be heard as expeditiously as reasonably possible, and that Canada has not established any compelling or exceptional circumstances to warrant the delay of this application. It is submitted that the request for adjournment should be denied.

Yours truly,

WILSON LAW OFFICE

PER:



KEITH WILSON, Q.C.  
Barrister & Solicitor

cc: Department of Justice Canada  
Ms. Sharlene Telles-Langdon  
Senior General Counsel



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[Canada.ca](#) > [Transport Canada](#)

# Suspension of the mandatory vaccination requirement for domestic travellers and federally regulated transportation workers

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From: [Transport Canada](#)

## Background

Today, the Government of Canada announced that, as of June 20, it will suspend vaccination requirements for domestic and outbound travel, federally regulated transportation sectors and federal government employees.

While the suspension of vaccine mandates reflects an improved public health situation in Canada, the COVID-19 virus continues to evolve and circulate in Canada and globally. Given this context, and because vaccination rates and virus control in other countries varies significantly, current vaccination requirements at the border will remain in effect. This will reduce the potential impact of international travel on our health care system and serve as added protection against any future variant. Other public health measures, such as wearing a mask, continue to apply and will be enforced throughout a traveller's journey on a plane or train.

## Requirement for vaccinations suspended for domestic and outbound travel

- As of June 20, 2022, at 00:01 EDT, vaccination will no longer be a requirement to board a plane or train in Canada.
- This change does not affect border measures that require all travellers entering Canada to continue following entry requirements, including vaccination.
- Other public health measures, such as wearing a mask, continue to apply and will be enforced throughout a traveller's journey on a plane or train.
- Given the unique nature of cruise ships, including the fact that passengers are in close contact with each other for extended periods of time, vaccination against COVID-19 is still required for passengers and crew on cruise ships.
- Adherence to strict public health requirements on cruise ships will still be required.

## **Federally regulated transportation sector workers**

- As of June 20, 2022, at 00:01 EDT, employers in the federally regulated air, rail, and marine sectors will no longer be required to have mandatory vaccination policies in place for employees.
- Employers will be responsible for establishing return-to-work practices.
- Furthermore, the Government of Canada is no longer moving forward with the proposed regulations to make vaccination mandatory in all federally regulated workplaces.

## **Masking Requirements**

- Travellers on federally regulated planes and trains continue to be required to wear a mask throughout their journey except for brief periods (e.g., eating or drinking).
- Passengers on cruise ships will be expected to follow the masking requirements and other hygiene measures as directed by the ship's crew,

regardless of whether they are foreign or domestic.

Face masks are the most basic, visible, and low-cost measure for reducing transmission of COVID-19. Studies show that masks reduce spread of the disease, especially in enclosed areas or in areas with reduced ventilation. Public health experts continue to recommend the use of masks in crowded spaces and indoor settings.

## **Science-based decision making**

Following a successful vaccination campaign, 32 million eligible Canadians have been vaccinated against COVID-19. The Government of Canada's decision to suspend the mandatory vaccination requirement for the domestic transportation sector was informed by key indicators, including

- the evolution of the virus;
- the epidemiologic situation and modelling (stabilization of infection and hospitalizations across the country);
- vaccine science; and
- high levels of vaccination in Canada against COVID-19.

The Government of Canada will continue to evaluate measures and will not hesitate to make adjustments based on the latest public health advice and science to keep Canadians and the transportation system safe and secure.

## **Entry requirements remain for travel to Canada from abroad**

Canadian citizens and Canadian permanent residents returning from international destinations who do not qualify for the fully vaccinated traveller exemption continue to be required to provide a valid pre-entry test result, remain subject to Day 1 and Day 8 molecular testing, and quarantine for 14 days.

In addition, all travellers entering Canada are required to input their mandatory information in [ArriveCAN](#) within 72 hours before their arrival in Canada. Travellers who arrive without completing their ArriveCAN submission may be subject to Day 1, Day 8 molecular testing, quarantine for 14 days, and to fines or other enforcement actions, regardless of their vaccination status.

## Remote communities

With the suspension of the vaccination mandate for domestic and outbound travel, the testing accommodation for remote communities is no longer required. The Government of Canada will continue to work with communities, Indigenous groups, provinces and territories, and operators to support remote communities as the pandemic evolves.

## Foreign nationals

Vaccine requirements for entry into Canada by foreign nationals remain unchanged at this time. Foreign nationals who are not fully vaccinated continue to be prohibited entry into Canada. With the suspension of the domestic mandate, unvaccinated foreign nationals will continue to be able to depart Canada by plane or train.

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### Date modified:

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# Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees

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From: [Treasury Board of Canada Secretariat](#)

## News release

June 14, 2022 – Ottawa, Ontario – Treasury Board of Canada Secretariat and Transport Canada

Following a successful vaccination campaign, 32 million (or nearly 90%) of eligible Canadians have been vaccinated against COVID-19 and case counts have decreased. Canadians have stepped up to protect themselves and the people around them, and rates of hospitalization and deaths are also decreasing across the country, and Canada has one of the highest rates of vaccination in the world.

Vaccination continues to be one of the most effective tools to protect Canadians, including younger Canadians, our health care system and our economy. Everyone in Canada needs to keep up to date with recommended COVID-19 vaccines, including booster doses to get ready for the fall. The Government of Canada will continue to work with provinces and territories to help even more Canadians get the shots for which they are eligible.

Throughout the pandemic, the Government of Canada's response has been informed by expert advice and sound science and research. As the COVID-19 pandemic has evolved, so too have public health measures and advice, which

includes vaccination requirements that were always meant to be a temporary measure.

As such, the government announced today that, as of June 20, it will suspend vaccination requirements for domestic and outbound travel, federally regulated transportation sectors and federal government employees.

While the suspension of vaccine mandates reflects an improved public health situation in Canada, the COVID-19 virus continues to evolve and circulate in Canada and globally. Given this context, and because vaccination rates and virus control in other countries varies significantly, current vaccination requirements at the border will remain in effect. This will reduce the potential impact of international travel on our health care system and serve as added protection against any future variant. Other public health measures, such as wearing a mask, continue to apply and will be enforced throughout a traveller's journey on a plane or train.

## **Travellers and transportation workers**

- As of 00:01 EDT on June 20, 2022, the vaccination requirement to board a plane or a train in Canada will be suspended.
- In addition, federally regulated transport sector employers will no longer be required to have mandatory vaccination policies in place for employees.
- Due to the unique nature of cruise ship travel, vaccination requirements for passengers and crew of cruise ships will continue to remain in effect.
- Masking and other public health protection measures will continue to be in place and enforced on planes, trains, and ships.
- Current border measures, including the existing vaccination requirement for most foreign nationals to enter Canada, and quarantine and testing

requirements for Canadians who have not received their primary vaccine series, remain in effect.

## Federal public service

- Also on June 20, the *Policy on COVID-19 Vaccination for the Core Public Administration (CPA) Including the Royal Canadian Mounted Police* will be suspended.
- Employees of the CPA will be strongly encouraged to remain up to date with their vaccinations; however, they will no longer be required to be vaccinated as a condition of employment.
- As such, employees who are on administrative leave without pay for noncompliance with the Policy in force until now will be contacted by their managers to arrange their return to regular work duties.

Crown corporations and separate agencies will also be asked to suspend vaccine requirements, and the vaccination requirement for supplier personnel accessing federal government workplaces will also be suspended. With the suspension of vaccination requirements, employees placed on unpaid leave may return to work. The government and other employers will ensure that these employees can resume their duties as seamlessly as possible.

Furthermore, the Government of Canada is no longer moving forward with proposed regulations under Part II (Occupational Health and Safety) of the *Canada Labour Code* to make vaccination mandatory in all federally regulated workplaces.

The Government of Canada will not hesitate to make adjustments based on the latest public health advice and science to keep Canadians safe. This could include an up-to-date vaccination mandate at the border, the reimposition of public service and transport vaccination mandates, and the introduction of vaccination mandates in federally regulated workplaces in the fall, if needed.

# Quotes

“Throughout this pandemic, our government’s approach has been rooted in close collaboration with our provincial and territorial partners. We all have a role to play in keeping Canadians safe. Our government will continue to make decisions based on the best public health advice and adjust its measures accordingly.”

- The Honourable Dominic LeBlanc, Minister of Intergovernmental Affairs, Infrastructure and Communities

“The mandatory vaccination requirement successfully mitigated the full impact of COVID-19 for travellers and workers in the transportation sector and provided broader protection to our communities. Suspending this requirement is possible thanks to the tens of millions of Canadians who did the right thing: they stepped up, rolled up their sleeves, and got vaccinated. This action will support Canada’s transportation system as we recover from the pandemic.”

- The Honourable Omar Alghabra, Minister of Transport of Canada

“As the country’s largest employer, the Government has led by example to help protect the health and safety of the federal workforce, as well as those in the federally regulated travel sector. We are now in a much better place across Canada, and vaccination mandates helped us to get there. As we move forward, we will continue to take action to keep public servants safe, and all employees are strongly encouraged to keep their vaccinations current so they get all recommended doses.”

- The Honourable Mona Fortier, President of the Treasury Board

“While the suspension of vaccine mandates reflects an improved public health situation in Canada, the COVID-19 virus continues to evolve and circulate in Canada and globally. The science is also perfectly clear on one thing: vaccination remains the single most effective way to protect ourselves, our families, our communities, and our economy against COVID-19. We don’t know what we may or may not face come autumn, but we know that we must remain prudent, which is why our government continues to strongly encourage everyone in Canada to stay up to date with their COVID-19 vaccines, which includes recommended booster doses.”

- The Honourable Jean-Yves Duclos, Minister of Health

## Related products

- [Backgrounder: Government of Canada suspends mandatory vaccination for the federal workforce](#)

- [Backgrounder: Suspension of the mandatory vaccination requirement for domestic travellers and federally regulated transportation workers](#)
- [Backgrounder: Preventing or limiting the spread of COVID-19 on cruise ships](#)

## Associated links

- [COVID-19 vaccination for federal public servants](#)
- [COVID-19: Boarding flights, trains, and cruise ships in Canada](#)
- [COVID-19: Cruise ship travel](#)
- [COVID-19: Travel, testing, and borders](#)
- [COVID-19: Provincial and territorial resources](#)

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**Date modified:**

2022-06-14