

SCHEDULE(Section48)

Simplified Action

Federal Court

Between:



**AMANDA YATES, PATRIC LAROCHE, JENNIFER HARRISON, VICTOR
ANDRONACHE, SCOTT BENNETT, MATTHEW LECCESE, DARLENE
THOMPSON, ALEXANDER MACDONALD, MARCEL JANZEN AND JOANNE
WALSH**

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

BACKGROUND

1. Beginning October 30, 2020 until September 30, 2022, the Governor in Council (the “GiC”) promulgated a series of Orders-in-Council (“OiC’s”) pursuant to section 58 of the *Quarantine Act* S.C. 2005, c. 20 (the “Act”) to impose with exceptions, upon persons entering the dominion of Canada, the disclosure of certain information including certain medical information electronically.
2. Of the OiC’s materially relevant to the Action herein, the GiC promulgated Order-in-Council PC 2022-0321, PC 2022-0567 and PC 2022-0836 with the first of such series

beginning March 31, 2022 and the last expiring on September 30, 2022 (collectively as the “Decision”).

3. The Decision required persons entering Canada, including Canadian citizens, to disclose certain information relating to their COVID-19 vaccination status to the Minister of Health, screening officer or quarantine officer by electronic means, unless they belong to a class unable to use such electronic means.
4. The Decision further required persons entering Canada, including Canadian citizens, who were not vaccinated for COVID-19 to undergo mandatory molecular testing for COVID-19 and to quarantine for 14-days, while “fully vaccinated” Canadians were largely exempt from such requirements.
5. The electronic means specified was a form of digital software entitled, “ArriveCAN” which was also used as an exclusive method to collect information other than certain information relating to COVID-19 vaccination status from persons entering Canada.

PARTIES

6. The Plaintiff, Amanda Yates is a Canadian citizen residing in the City of Ottawa, Ontario.
7. The Plaintiffs, Patric Laroche and Jennifer Harrison are Canadian citizens who are married and reside in Sawyerville, Quebec.
8. The Plaintiff Victor Andronache is a Canadian citizen residing in the City of Toronto, Ontario.
9. The Plaintiff Scott Bennett is a Canadian citizen residing in Cambridge, Ontario.

10. The Plaintiff Matthew Leccese is a Canadian citizen residing in Thunder Bay, Ontario.
11. The Plaintiff Darlene Thompson is a Canadian citizen residing in Langley, British Columbia.
12. The Plaintiff Alexander MacDonald is a Canadian citizen residing in Antigonish, Nova Scotia.
13. The Plaintiff Marcel Janzen is a Canadian citizen residing in Morden, Manitoba.
14. The Plaintiff Joanne Walsh is a Canadian citizen residing in Burlington, Ontario.
15. The Defendant, the Attorney General of Canada, is named pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 and section 48(1) of the *Federal Courts Act* R.S.C., 1985, c. F-7, as amended.

FACTS

i) Amanda Yates

16. The Plaintiff, Amanda Yates returned to Canada from the United States on May 31, 2022 *via* land crossing. Ms. Yates' husband downloaded ArriveCAN and attempted to disclose information therein.
17. There was a technological issue with ArriveCAN and the Canada Border Services Agency (“CBSA”) agents referred Ms. Yates and her husband to secondary inspection. CBSA agents asked Ms. Yates for her vaccination status, which she declined to disclose due to privacy concerns.

18. CBSA agents then referred Ms. Yates to Public Health Agency of Canada (“**PHAC**”) agents, who insisted on disclosure of her vaccination status. She refused to disclose her vaccination status. At no time was Ms. Yates provided with a customs declaration form.
19. Ms. Yates was provided with an information sheet about quarantine procedures and instructed to quarantine for 14 days. She was issued a fine by PHAC pursuant to s. 71 of the Act in the amount of \$6,255 for non-compliance with section 58 and was required to quarantine for 14-days.

ii) Patric Laroche and Jennifer Harrison

20. The Plaintiffs Patric Laroche and Jennifer Harrison at all material times operated trucks for a private company transporting livestock between Canada and the United States.
21. On April 2, 2022, Mr. LaRoche and Ms. Harrison returned to Canada *via* land crossing. They refused to use ArriveCAN or disclose their vaccination status due to privacy concerns. At no time were they provided with a customs declaration form.
22. Mr. LaRoche and Ms. Harrison were given an information sheet about quarantine procedures. A border agent wrote by hand at the top of the sheet “Quarantine ends April 15, 2022 at midnight”.
23. Mr. LaRoche and Ms. Harrison were each issued a fine of \$8,550 by the CBSA pursuant s.71 of the Act for failing to comply with s. 58.

iii) **Victor Andronache**

24. The Plaintiff, Victor Andronache left Canada in early July of 2022 to attend his grandfather's funeral in Romania. He returned to Canada *via* Pearson International Airport ("Pearson") on July 12, 2022.
25. Mr. Andronache did not fill out ArriveCAN on arrival due to privacy concerns. Upon arrival at Pearson, he was further directed by CBSA agents to fill out ArriveCAN. When he further refused, both police and security were called and he was directed to PHAC agents. Mr. Andronache repeatedly asked whether there was a paper alternative to ArriveCAN and was told there was no alternative.
26. Thereafter, PHAC agents continued to ask questions about Mr. Andronache's vaccination status, which he refused to answer. They also continued to insist that he must download ArriveCAN on his phone; otherwise he would not be allowed to leave. At one point Mr. Andronache started experiencing uncontrollable nervous tremors all over his body, arms and legs and started shaking uncontrollably due to stress.
27. Due to Mr. Andronache's physical state and having PHAC and police pressure him to download ArriveCAN and out of the desire to be able to leave the airport, he attempted to use ArriveCAN on his phone.
28. Unfortunately, ArriveCAN was malfunctioning and would not allow Mr. Andronache to create an account. After demonstrating the malfunction to PHAC agents, he was directed to use the web browser on his phone to complete ArriveCAN. Eventually, he was able to fill

out the information required but did not disclose his vaccination status due to privacy concerns.

29. After being threatened with a fine by PHAC, Mr. Andronache reluctantly disclosed his vaccination status to the PHAC agents with Peel Region Police officers present. He was instructed to quarantine for 14 days.
30. Mr. Andronache was issued a fine pursuant to s. 71 of the Act in the amount of \$6,255 for non-compliance with section 58.

iv) **Scott Bennett**

31. The Plaintiff, Scott Bennett at all material times, had a medical exemption for COVID-19 vaccines due to a medical contraindication.
32. Mr. Bennett returned to Canada from a trip *via* Pearson airport on July 12, 2022, and was told by a CBSA agent to use ArriveCAN. Due to privacy concerns, he refused to use ArriveCAN and CBSA referred him to PHAC.
33. PHAC agents insisted that Mr. Bennett use ArriveCAN, which he refused. Mr. Bennett had completed a customs declaration form at a kiosk. He provided the form to a CBSA agent, who passed it on to PHAC.
34. Mr. Bennett was thereafter issued a fine by PHAC pursuant to s. 71 of the Act in the amount of \$6,255 for non-compliance with section 58.

v) **Matthew Leccese**

35. The Plaintiff, Matthew Leccese, at all material times was “fully vaccinated” as defined in the Decision.
36. Mr. Leccese went to the United States on May 17, 2022, to pick up some parts for his vehicle. He crossed into the United States *via* Pidgeon River, Ontario. He was in the US for approximately 25 minutes before returning to Canada.
37. Upon Mr. Leccese’s return to Canada, CBSA agents demanded that Mr. Leccese use ArriveCAN. He refused due to privacy concerns. He was thereafter directed by CBSA to PHAC agents.
38. Mr. Leccese informed the PHAC agent that he was willing to answer questions about any symptoms or contact related questions. He also indicated to PHAC that he was prepared to provide proof of his electronic vaccination certificate. The PHAC agent insisted that he use the ArriveCAN app. At no time was Mr. Leccese offered an alternative to using the ArriveCAN application. He was ordered to quarantine for 14 days.
39. Mr. Leccese was issued two fines:
- a. pursuant to s. 70 of the Act in the amount of \$955 for non-compliance with section 15(1); and
 - b. pursuant to s. 71 of the Act in the amount of \$6,255 for non-compliance with section 58.

vi) Darlene Thompson

40. The Plaintiff Darlene Thompson returned from the United States to Canada on July 17, 2022 at a land crossing in British Columbia and produced her passport for inspection. CBSA agents demanded that she also use ArriveCAN, which she refused due to privacy concerns.
41. The CBSA agents then demanded Ms. Thompson's vaccination status, which she also refused to disclose due to privacy concerns. Ms. Thompson was then referred to PHAC agents who continued to demand she disclose her vaccination status under the threat of a fine. Ms. Thompson again refused to disclose her vaccination status but agreed to answer any questions regarding symptoms or contact with anyone with symptoms of COVID-19.
42. At no point was Ms. Thompson provided with a customs declaration form.
43. Thereafter, CBSA agents searched Ms. Thompson's vehicle without her consent and found Ms. Thompson's passport and license, which they gave to the PHAC agents. PHAC then took the documents and issued fines:
 - c. pursuant to s. 70 of the Act in the amount of \$900 for non-compliance with section 15(1); and
 - d. pursuant to s. 71 of the Act in the amount of \$5,000 for non-compliance with section 58.

vii) Alexander MacDonald

44. The Plaintiff Alexander Macdonald attempted to cross from Canada into the United States on April 21, 2022 *via* land. United States border agents asked him whether he had received a COVID-19 vaccination, which he answered in the negative. Mr. Macdonald was therefore denied entry into the United States and was issued a form that stated the grounds of denial. Mr. Macdonald returned from the United States border and presented the form to CBSA and departed without issue.
45. Mr. Macdonald again attempted to cross from Canada into the United States on July 4, 2022 and was again denied entry into the United States and was issued a form that stated the grounds of denial. Upon returning from the United States border he presented the denial form to CBSA but was directed to secondary questioning. PHAC agents were called and he was questioned about having appropriate quarantine facilities. PHAC insisted that Mr. Macdonald use ArriveCAN for his purported “re-entry” into Canada and for check-ins for the quarantine duration.
46. Mr. MacDonald informed PHAC agents that he had not left Canada and was able to present documentary proof of same. This information was ignored by the PHAC agent.
47. At no point was Mr. MacDonald provide with a customs declaration form.
48. Under duress, Mr. MacDonald reluctantly complied with the PHAC agent’s demands to download and use ArriveCAN and declared his vaccination status.
49. As a result of his declaration, he was ordered to quarantine for 14 days and thereafter completed such requirement.

viii) Marcel Janzen

50. The Plaintiff, Marcel Janzen was referred to a Florida clinic by his doctor for a medical procedure. Mr. Janzen and his wife crossed the US border on April 22, 2022 and thereafter flew to Florida. After the medical procedure, Mr. Janzen and his wife flew back to North Dakota and returned to Canada via a land border on April 27, 2022.
51. At the Canadian border, CBSA agents requested Mr. Janzen and his wife disclose their vaccination status, which they refused due to privacy concerns. CBSA then directed them to PHAC.
52. PHAC agents detained Mr. Janzen and his wife for questioning for over an hour on their vaccination status and quarantine plans. PHAC agents also requested that they use ArriveCAN. When Mr. Janzen asked if he could leave, PHAC agents said no and continued the questioning.
53. After reviewing the “terms and conditions” on ArriveCAN, Mr. Janzen had privacy concerns with disclosing his medical information and therefore, refused to do so. Thereafter, Mr. Janzen and his wife were informed that they would receive a fine in the mail and that they could leave.
54. At no point was Mr. Janzen provided with a customs declaration form nor alternative to ArriveCAN.
55. In July of 2022, Mr. Janzen and his wife were each issued fines with respect to the above incident as follows:

- a. pursuant to s. 70 of the Act in the amount of \$1,453 for non-compliance with section 15(1); and
- b. pursuant to s. 71 of the Act in the amount of \$8,550 for non-compliance with section 58 Act.

56. On December 2, 2022, Mr. Janzen was informed by the crown prosecutor that they would not be proceeding with the above noted charges against him and his wife.

ix) Joanne Walsh

57. The Plaintiff Joanne Walsh was at all material times “fully vaccinated” as defined in the Decision.

58. On July 19th, 2022, Ms. Walsh returned to Canada after visiting Niagara Falls, New York *via* the Peace Bridge by foot.

59. On her return to Canada, Ms. Walsh did not use ArriveCAN, due to privacy concerns. CBSA agents directed Ms. Walsh to secondary inspection with PHAC agents. Ms. Walsh disclosed to a PHAC agent her vaccination status by showing proof of vaccination for COVID-19 with a paper certificate. PHAC informed her that paper evidence of COVID-19 vaccination was unacceptable and ordered her to quarantine for 14 days.

60. On August 13, 2022 Ms. Walsh returned to Canada at the same Peace Bridge and did not use ArriveCAN. A CBSA agent directed Ms. Walsh to secondary inspection with PHAC agents where she was issued a \$6,255 fine pursuant to s. 71 of the Act for non-compliance with section 58.

61. Three days later, Ms. Walsh was contacted by Health Canada informing her that she was required to quarantine for 14 days.
62. Ms. Walsh was ordered to quarantine for 14 days on three different occasions during the material times. PHAC periodically sent agents to her home during the quarantine periods to check in on her compliance with the quarantine.

NATURE OF CLAIM

63. ArriveCAN collects certain information from persons entering Canada electronically, contrary to subsection 5(3) of the *Reporting of Imported Goods Regulations* SOR/86-873 made pursuant to the *Customs Act*, R.S.C. 1985 c. 1. It also collected private medical information, all of which was disclosed on ArriveCAN terms and conditions as being shareable to:
 - a. other government departments and agencies, police forces and other countries to administer laws that prohibit, control and regulate the importation of goods and movement of people; and
 - b. other government departments such as statistics Canada, the public health agency of Canada, Employment and Social Development Canada and for the purpose of statistical reporting and public health and program integrity.
64. The Decision required unvaccinated Canadians who were not exempt, to quarantine for 14 days upon arrival to Canada.
65. The Decision largely exempted vaccinated persons from undergoing molecular testing for COVID-19 as a pre-arrival, at time of entry or after entry condition.

66. The COVID-19 vaccines referred to in the Decision neither stop infection nor transmission of the COVID-19 virus. These facts were known, or ought to have been known, to the Defendant at all material times, including at the time the Decision was pronounced.
67. The mandatory requirement to disclose COVID-19 vaccination status as a condition of entry into Canada as required by the Decision, is contrary to sections 7 and 8 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”).
68. Mandatory collection of private medical information electronically through ArriveCAN as required by the Decision, which is shareable to other persons and entities, violates the liberty of Canadians by making their medical information susceptible to breach and misuse, contrary to section 7 of the *Charter*.
69. Imposing a 14-day quarantine requirement as required by the Decision on Canadians who were not vaccinated for COVID-19, is contrary to sections 7 and 9 of the *Charter*.
70. Imposing a mandatory COVID-19 molecular testing requirement on unvaccinated but not vaccinated Canadians, is contrary to Section 7 of the *Charter*.
71. **The Plaintiffs therefore claim as follows:**
 - a. A declaration pursuant to section 24(1) of the *Charter* that the impugned measures infringe the Plaintiffs' rights and freedoms under sections 7, 8 and 9 of the *Charter*, where applicable to each of them, and are deserving of such remedy as the court considers appropriate and just in the circumstances;
 - b. An award of damages payable by the Defendant to each of the Plaintiffs in an amount deemed appropriate by this Honourable Court collectively not exceeding

\$50,000 pursuant to section 24(1) of the *Charter* for breach of sections 7, 8 and 9 of the *Charter*, as applicable;

- c. The costs of this proceeding; and
- d. Such further and other relief this Honourable Court considers just and necessary.

72. The plaintiff proposes that this action be tried at Toronto.

Dated at Toronto, Ontario this 24th day of January 2023.



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- R.S., 1985, c. F-7, Sch.
- 2002, c. 8, s. 58