Consolidated Dockets: A-251-22 (lead); A-252-22; A-253-22; A-254-22

FEDERAL COURT OF APPEAL

BETWEEN:

Docket A-251-22 (lead)

THE HONOURABLE A. BRIAN PECKFORD, LEESHA NIKKANEN, KEN BAIGENT, DREW BELOBABA, NATALIE GRCIC, AND AEDAN MACDONALD

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

AND BETWEEN:

Docket: A-252-22

SHAUN RICKARD AND KARL HARRISON

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

AND BETWEEN:

Docket: A-253-22

THE HONOURABLE MAXIME BERNIER

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

AND BETWEEN:

Docket: A-254-22

NABIL BEN NAOUM

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF FACT AND LAW OF APPELLANT HON. MAXIME BERNIER

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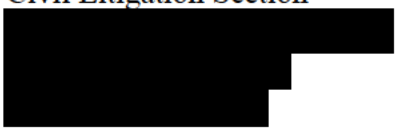

Per: J. Sanderson Graham, Robert Drummond and Virginie Harvey
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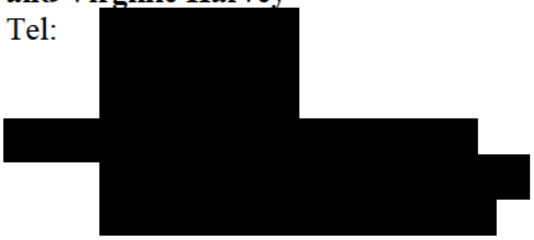

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OVERVIEW

1. The appellant Hon. Maxime Bernier sought judicial review, before the Federal Court, of Transport Canada's interim orders ("**Orders**") which set up the Covid air travel ban (or air passenger vaccine mandate) between the Fall of 2021 and the end of June 2022.

2. On October 20, 2022, some eleven days before the hearing on the merits, and despite a 12,000-page strong evidentiary record, the Court below dismissed the case on the ground of mootness. At the second stage of the *Borowski* analysis, the Hon. Gagné ACJ declined to exercise her discretion to hear an allegedly moot case because, in her opinion, the uncertainty in the law and public interest[1] in a ruling on the merits did not outweigh judicial economy considerations[2].

3. The appellant asks that the judgment below (hereafter "**Mootness Judgment**" collectively with the reasons for judgment) be set aside and that the whole case be returned to the Federal Court for trial on the merits. The legality principle (or "**Rule of Law**") demands it.

PART I: Facts

4. The Court below correctly stated the following facts at paras. 5 *et seq.* of the Mootness Judgment :

> *[5] From June 2020 onwards, but prior to the period at issue in these Applications, the Minister of Transport made a series of 14-day IOs pursuant to subsection 6.41(1) of the Aeronautics Act, RSC 1985, c A-2, in order to respond to the risk to aviation or public safety caused by the COVID-19 pandemic (IOs 1 to 42). Subsection 6.41(2) of the Aeronautics Act provides that any such IO ceases to have effect fourteen days after it is made unless it is approved by the Governor in Council within that fourteen day period. When that is the case, the Aeronautics Act sets out a process to follow to transform the IO into a regulation having the same effect as the IO.*
>
> *[6] In fact, none of the impugned IOs were submitted for approval by the Governor in Council, instead, each IO was replaced by a new IO every fourteen days.*
>
> *[7] On October 29, 2021, IO 43 introduced the first elements of a federal vaccine mandate in the air transportation sector. It allowed for testing as an alternative to vaccination for air passengers.*

[1] Mootness Judgment, paras. 42 to 45, and 47.
[2] *Idem*, paras. 39, 40, 47.

> *[8] From November 30, 2021 (when IO 47 came in to effect) onwards, testing was no longer allowed as an alternative to vaccination. Vaccination was a requirement for air travel within or departing Canada with limited exceptions including medical inability to be vaccinated, essential medical care, sincerely held religious beliefs, foreign nationals (non-residents) departing Canada, travel in support of national interests, travel to or from remote communities, or cases of emergency travel.*
>
> *[9] This air passenger vaccine mandate was maintained through IOs until June 20, 2022.*
>
> *[10] The Applicants each independently filed Notices of Application for judicial review challenging the orders. The earliest was filed on December 24, 2021 and the last on March 11, 2022. Because of the differences in time when they initiated their Applications, there are differences as to which specific iteration of the IO they challenge (one Applicant challenges IO 49, two challenge IO 52, and one challenges IO 53).*

5. This Honourable Court has judicial notice of the following facts:

   a. The Canadian population was subjected to Covid measures for over 28 months.

   b. Said measures included curfews, proof of Covid vaccination as a prerequisite to access various services and activities, and restrictions on free movement within Canada. The interim orders (hereafter "**Orders**") at issue are an example.

   c. Said measures were generally temporary, often modified, suspended or repealed, then reinstated.

   d. The appellants have produced extensive evidence and argument, which the Court can see is thorough and relevant. They are ready to proceed on the merits.

6. Expiry of the Orders before trial was predictable from the outset. The Orders were likely to be repealed (or not renewed) at some point in time. That has no bearing on the appropriateness of a trial and judgment on the merits.

7. The questions raised herein are of national importance, and the cost of leaving them unanswered would be heavy – right now and for the future of Canadian constitutional history. Those issues touch the religious and moral, family, medical, professional, and democratic spheres of life of millions of Canadians. They deserve, on the part of the Federal Court and in the name of our fundamental constitutional precept of the Rule of Law, a judgment on the merits.

8. Indeed, to dismiss the Applications would amount to immunizing the government from constitutional scrutiny for actions that infringed the fundamental freedoms of hundreds of thousands of Canadians.

9. The Mootness Judgment turns a blind eye to egregious State action committed on a scale never seen in this country since the October Crisis of 1970. It fails to acknowledge the obvious interest that the public at large and our constitutional institutions have in a final and complete determination of the substantive issues. Letting the government off the hook without a trial in this case could bring the administration of justice into disrepute.

PART II – Points in issue

10. We appealed the Mootness Judgment on the following grounds:

a. The Learned Application Judge erred in failing to exercise her discretion to hear the merits of the judicial review application.

b. The Learned Application judge erred in her determination that judicial economy considerations outweighed the important public interest and uncertainty in the law:

i. The Learned Application Judge erred in failing to recognize the appropriateness of devoting judicial resources to adjudicating inherently temporary matters such as the Ministerial Orders/Interim Orders;

ii. The Learned Application Judge erred in failing to find that the Minister's threat to re-implement the mandatory vaccine requirement weighed heavily in favour of hearing the application as a matter of public interest; and

iii. The Learned Application Judge erred in failing to find that there was a significant public interest in determining the constitutionality of prohibiting millions of Canadians from travelling overseas or across Canada in any practical manner.

c. The Learned Application judge erred in her finding that the Ministerial Orders/Interim Orders are not evasive of judicial review.

11. Those grounds for appeal boil down to one simple point (which we shall address as such): the Mootness Judgment is inconsistent with the Rule of Law.

PART III – Submissions

A) The mootness doctrine should not sterilize applicants' rights to Charter declarations

12. In *Borowski*, the Supreme Court of Canada articulated a two-step analysis for mootness: 1) determine whether the required tangible and concrete dispute has disappeared, and the issues have become academic; 2) if the response to the first question is affirmative, decide whether the court should nonetheless exercise its discretion to hear the case[3].

13. We leave it to our learned co-appellants to argue whether the tangible and concrete dispute had disappeared at the time of the Mootness Judgment. Either at the first or the second stage of the *Borowski* analysis our argument in part III(A) of this *Memorandum* is essentially the same.

14. It is trite law that declarations of Charter breach may provide an adequate remedy. If, in the totality of the circumstances, the Court's pronouncement that there has been a breach of rights is sufficient to vindicate the right and afford redress, then that will be sufficient to meet the primary remedial objective[4].

15. That is true where the damage suffered by a given applicant is hard to quantify, or where an action for Charter damages would entail prohibitive costs and delays. It is doubly true where the constitutional issue is unlikely to be argued in defence to penal or quasi criminal prosecutions. Such is the case here.

16. Indeed, under the Orders, persons who failed to provide proof of Covid vaccination prior to air travel **did not face prosecutions** in defence of which they could have brought Charter motions: **they simply were not admitted onboard**. Gagné ACJ's suggestion[5] that they should bring a costly, lengthy action for s. 24(1) Charter damages instead of pursuing **ripe** applications for judicial review is overly abstract and in no way conducive to judicial economy.

17. As mentioned above, substantive determinations on the constitutional objections raised against the Orders are necessary for maintaining the Executive branch and the Judicial branch in their proper roles as dictated by the *Constitution Act 1867*, and the *Constitution Act 1982*.

[3] *Borowski* v. *Canada*, [1989] 1 SCR 342, para 16.
[4] *Vancouver (City)* v. *Ward*, 2010 SCC 27, para. 37.
[5] Mootness Judgment, para. 46.

18. The adequate answer to the mootness argument in this case should be analogous to the one the Federal Court of Appeal gave in *Dixon* v. *Canada (Governor in Council)*, [1997] 3 FC 169:

> *"We agreed to hear the appeal. The trial decision, whether right or wrong, goes to an issue which lies at the heart of the division of responsibilities between the Judiciary and the Executive. Indeed, the case involves the extent to which a court, exercising its proper adjudicative role, should be entitled to interfere with discretionary decisions made by the Governor in Council. It is, therefore, rather unique in the sense that the need for the Judiciary to appreciate its proper adjudicative role in our political framework actually militated in favour of hearing the appeal. Moreover, the respondent remained intent on pursuing the appeal, which preserved the adversarial context and ensured that the issues were well and fully argued before this Court. As is evident from the litigation still pending in the Trial Division, notwithstanding the release of the Commissioners' report on June 30, 1997 (after the oral hearing in this appeal), there may be collateral consequences to the outcome which may have an impact on the final form in which the Commissioners' report remains on public record. Applying the criteria laid down by the Supreme Court in* Borowski v. Canada (Attorney General)*, we were of the view that, on balance, it was in the interest of justice for us to hear the appeal, and so we did."*[6]

B) *Existing "Covid case law" does not provide relevant answers*

19. We are aware of this Honourable Court's succinct judgment in *Spencer* v. *Canada (Attorney General)*, 2023 FCA 8, by which the Federal Court of Appeal elected not to revisit the Hon. Crampton J.'s judgment[7] which held, *inter alia*, that forcing returning travelers to isolate in a quarantine hotel did not engage s. 7 Charter rights. The *Spencer* case brought factual and legal issues quite different from this one, and the reasoning in *Spencer* should not be translated here *mutatis mutandis*.

20. Moreover, Gagné ACJ's finding that a trial on the merits "would simply result in applying settled Charter jurisprudence"[8] (her words) is erroneous on its face. As per *stare decisis*, a handful of trial courts' judgments dealing with very different legal issues and fact patterns do not constitute "settled Charter jurisprudence".

[6] *Dixon* v. *Canada (Governor in Council) (C.A.)*, 1997 CanLII 6145 (FCA), [1997] 3 FC 169, para. 3; see also *Glynos* v. *Canada*, 1992 CanLII 8572 (FCA), p. 705, paras. *h-j*.
[7] *Spencer* v. *Canada (Health)*, 2021 FC 621
[8] Mootness Judgment, paras. 42 et seq.

21. The mere presence of the word "Covid" in a prior case does not instantaneously make that case a precedent. Gagné ACJ cited a dozen judgments, many which would find little or no application herein, many of them interlocutory:

a. *Monsanto* v. *Canada (Health)*, 2020 FC 1053: interlocutory, application for stay of quarantine measures, reasonableness review, legal grounds only, no constitutional argument.

b. *Spencer* v. *Canada (Health)*, 2021 FC 621: hotel quarantines, different breaches alleged, different constitutional arguments (e.g. democratic rights not at issue).

c. *Canadian Constitution Foundation* v. *Attorney General of Canada*, 2021 ONSC 4744: quarantine again, same as *Spencer* (supra).

d. *Turmel* v. *Canada*, 2021 FC 1095, motion to strike, self-represented applicant, fatally deficient pleadings.

e. *Wojdan* v. *Canada (Attorney General)*, 2021 FC 1341: employment law, interlocutory injunction sought against Covid vaccination policy at the RCMP.

f. *Neri* v. *Canada*, 2021 FC 1443: interlocutory injunction sought against Covid vaccination policy in the Canadian army.

g. *Zbarsky* v. *Canada*, 2022 FC 195: motion to strike, self-represented litigant, fatally deficient pleadings.

h. *Taylor* v. *Newfoundland and Labrador*, 2020 NLSC 125: provincial legislation, different type of mobility restrictions, at a very early stage of the "Covid" era, limited (and mostly flawed) evidence available at that time regarding the justification under s. 1 Charter.

i. *Ingram* v. *Alberta (Chief Medical Officer of Health)*, 2020 ABQB 806: interim application, indoor and outdoor gatherings, masks, religious rights.

j. *Beaudoin* v. *British Columbia*, 2021 BCSC 512: religious gatherings, provincial legislation and measures, application partly successful, supports our theory of the case herein.

k. *Lachance* c. *Procureur général du Québec*, 2021 QCCS 4721: interlocutory, interim application not founded on Charter rights.

l. *Murray et al.* v. *Attorney General of New Brunswick*, 2022 NBQB 27: labour relations, jurisdictional issue.

22. At paragraphs 44 and 45 of the Mootness Judgment, Gagné ACJ relied heavily on *Syndicat des métallos, section locale 2008* c. *Procureur Général du Canada,* 2022 QCCS 2455 ("***Métallos***"), which did deal with the impugned federal travel ban in an employment context, but did not come clause to addressing the full spectrum of the issues raised herein:

a. The *Métallos* case deals only with section 7 of the Charter, in a labour context, while the applications herein deal with sections 2, 3, 6, 7, 8 and 15 of the Charter, section 44 of the *Canadian Bill of Rights*, SC 1960, c. 44, and section 81.1 of the *Canada Elections Act*, S.C. 2000, c. 9, in a much broader range of contexts, including that of fundamental political and democratic activity (*infra*).

b. The plaintiffs in *Métallos* did not attempt to demonstrate the vaccine's risks to human health[9].

c. The plaintiffs in *Métallos* did not develop the overbreadth argument under section 7 CCDL[10].

d. The Superior Court of Quebec, in *Métallos*, engaged in an suprisingly succinct analysis of the testimonial and scientific evidence presented[11] . The analysis consists of a dozen short paragraphs in which the judge takes at face value the assertions of the Crown's affiants[12]. The legal reasoning is so elliptical that it arguably does not meet the requirements of reasoning generally applicable to decisions of Canadian courts[13].

[9] *Métallos*, para. 175.
[10] *Métallos*, para. 200.
[11] *Métallos*, para. 208.
[12] *Métallos*, paras. 238-249.
[13] *Cojocaru* v. *British Columbia Women's Hospital and Health Centre*, [2013] 2 SCR 357, para. 13.

e. "Horizontal *stare decisis*" is a mere principle of comity, applicable exclusively within the same judicial hierarchy[14]. The Federal Court in this case owes no deference to the Superior Court's judgment in *Métallos*.

23. In other words, *Métallos* has not cleared up the legal issues brought before the Court in this case.

24. Before delving into Rule of Law considerations, we will outline two of the distinctive, solid grounds for judicial review in the case of the Hon. Maxime Bernier.

C) Transport Canada had no statutory grounds to issue the Orders ; it usurped Parliament's authority

25. The Orders are an egregious case of usurpation of the powers of Parliament by the Executive branch, based on a far-fetched distortion of the *Aeronautics Act*.

26. In the case of regulatory acts of government, a declaration of invalidity (*ultra vires*, illegality) by the Federal Court requires a showing that i) they are incompatible with the purpose of the statutory authorisation, or ii) they go beyond the scope of the *Aeronautics Act*, or iii) that they are based on irrelevant, irrelevant or completely unrelated considerations[15].

27. Section 6.41(1) of the ***Aeronautics Act***, RSC 1985, c. A-2, which the Minister relied on in making the Orders, provides:

> *Interim orders*
>
> *6.41 (1) The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Part*
>
> *(a) to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;*
>
> *(b) to deal with an immediate threat to aviation security, the security of any aircraft or aerodrome or other aviation facility or the safety of the public, passengers or crew members; or*

[14] *Wolf* v. *The Queen*, [1975] 2 SCR 107, page 109; *R.* v. *Sullivan*, 2022 SCC 19, paras. 61, 65, 83 and 86.
[15] *Katz Group Canada* v. *Ontario (Health and Long-Term Care)*, 2013 SCC 64, para. 24; *Syncrude Canada* v. *Canada (Attorney General)*, 2016 FCA 160, para. 27.

> *(c) for the purpose of giving immediate effect to any recommendation of any person or organization authorized to investigate an aviation accident or incident.*

28. The Orders stand in stark contrast to prior interim orders issued under the authority of section 6.41(1) of the *Aeronautics Act*. They were not intended to prevent a kind of danger falling within the permissible definitions of "aviation safety" and "safety of the public".

29. Crown witness Mario Boily, Executive Director, Program Development & Aviation Security at Transport Canada, defined "aviation safety" and "safety of the public" as risks of the same nature, but of different origins (i.e., intentional or unintentional, respectively).

- Cross-examination of Mario Boily, 24 June 2022, pages 18 and 20:

  Q- À l'occasion, monsieur Boily, vous faites référence à la sûreté et d'autres fois à la sécurité aérienne, pouvez-vous faire la nuance entre les deux (2), s'il vous plaît?

  […]

  Q- Je ne suis pas certain d'avoir compris votre réponse, peut-être que ça m'a échappé. Quand vous dites qu'il n'y a pas une intention, on parle d'une intention de quoi exactement?

  […]

  R- La sûreté de l'aviation est reliée normalement à des actes potentiellement ou intentionnels ou potentiellement intentionnels d'interférer avec l'aviation et le système de l'aviation. Donc, un exemple de ça pourrait être le terrorisme.

- Cross-examination of Mario Boily, 27 June 2022, pages 99 to 111:

  R- Donc, pour les fins de mon groupe, quand on regarde l'ensemble des risques à l'aviation, les tâches associées aux risques de nature intentionnelle sont du domaine de la sûreté.

  […]

Q- Quelle est votre compréhension professionnelle, et non une opinion juridique, quant à la catégorie sûreté ou sécurité dont relève...

[…]

Q- ... dont relève, a priori, la gestion du risque COVID en matière aéronautique?

[…]

Q- […] *Non, ce que je veux savoir c'est si dans le problème de la COVID, quant au... il y a un élément d'intentionnalité.*

R- Outre un individu qui ne veut pas, de façon volontaire, se souscrire au règlement, je n'en connais pas.

[…]

Q- Je vais faire un petit tour du vocabulaire sûreté et sécurité. Je vais avoir besoin de votre aide pour comprendre ce que veulent dire les termes un après l'autre. Quand on parle d'un accident, j'ai en tête accident versus incident.

[…]

R- De façon très... En fait, on va passer très vite à incident, je suppose, ensuite. Donc, d'habitude, de mon point de vue, en fait, un accident implique, implique du matériel, comme un avion ou quelque chose comme ça.

[…]

Q- Alors que l'incident?

R- Bien, pas nécessairement, non. En théorie, non, ça va être une nature différente. Je vous donne pas un avis expert ici. Dans mon ancien travail, on utilisait « événement », pour éviter la problématique.

[…]

R- Je vais juste continuer ma réponse d'avant. Parce que l'enjeu, qui est pas vraiment important pour les Canadiens au début, c'est de déterminer s'il y a une intention ou pas. Puis ce qui est important quand il arrive quelque chose c'est de gérer les conséquences. Une fois qu'il y a une détermination de faite, il va y avoir d'autres actions qui vont être prises.

Q- Vous conviendrez avec moi, cependant, que la COVID ne correspond pas à un événement?

R- Oui, je suis pas certain que c'est important, c'est un risque majeur, par contre. Puis pour la sûreté de l'aviation, par exemple, la majorité des mesures de mitigation en place sont basées sur le risque potentiel. Et puis, on en a pas parlé tantôt, mais elles sont contenues dans des mesures de sûreté confidentielle.

[…]

Q- Vous voulez me dire qu'il y a de la réglementation confidentielle en cette matière?

[…]

R- Oui.

[…]

Q- Mais ce que cherche à savoir c'est ces mesures confidentielles de sécurité, sont-elles, découlent-elles d'une norme confidentielle, d'un règlement confidentiel?

R- Donc, les mesures découlent de la Loi sur l'aéronautique et puis elles sont alignées avec le règlement public, lorsque nécessaire.

30. In the light of those answers, it becomes clear that Covid does not correspond to a "safety" risk within the meaning of the *Aeronautics Act*, according to the modern method of interpretation and the common meaning of words[16].

31. Mr Boily admitted that before 2020, the only regulatory measures concerning contagious diseases that he could remember were biosafety scenarios, i.e. the voluntary introduction of a pathogen.

- Cross-examination of Mario Boily, 27 June 2022, pages 121 and 122

  Q- O.K. Vous avez jamais eu, avant deux mille vingt (2020), connaissance de quelque initiative, au sein du groupe sûreté, d'une initiative qui visait à circonscrire la transmission de maladies contagieuses, n'est-ce pas?

  […]

  R- Là, maintenant, on est en train de parler potentiellement de biosûreté et non plus de grippe saisonnière.

  […]

  Q- On parlerait donc ici de crimes qui visent à répandre un agent pathogène au sein de la population, n'est-ce pas?

  […]

  R- Bien, ça pourrait être la population, ça pourrait être spécifique à un avion, ça pourrait être un avion-cargo ou autre.

  […]

  Q- D'accord. Mais outre l'étendue ou la nature de la cible, la définition que je vous ai fournie est à peu près exacte, n'est-ce pas?

  […]

[16] *Hills* v. *Canada (Attorney General)*, [1988] 1 SCR 513, paras. 76 and 77

R- Je vais pas confirmer si c'est exactement ça la définition, mais, en gros, vous parlez d'un acte intentionnel avec une menace biologique ou autre, là.

32. A search into the regulations adopted since 1997 under the authority of section 6.41(1) of the *Aeronautics Act* does not yields no example of public health measures pre-Covid. Apart from the Orders, almost all the regulations made under the authority of subsection 6.41(1) of the *Aeronautics Act* are an iteration of the following measures:

a. *Interim Order Respecting Battery-powered Hand-held Lasers*, P.C. 2018-986

b. *Interim Order Respecting the Use of Model Aircraft*, P.C. 2018-732

c. *Interim Order Respecting Certain Training Requirements (B-737-8 and Other Aircraft)*, P.C. 2021-97

d. *Interim Order No. 5 Respecting Flight Deck Occupants*, P.C. 2016-649

33. None of those listed measures can be compared, in terms of their purpose and the nature of the risks in question, to the Orders. The alien and inconsistent nature of the latter argues, by way of *ejusdem generis* (but *a contrario*)[17], in favour of our thesis.

34. Under the *Katz* criteria (*supra*), the Orders (i) went beyond the scope of subsection 6.41(1) of the *Aeronautics Act* and (ii) were based on considerations completely unrelated to empowerment. The Orders were thus invalid, illegal and *ultra vires* of the *Aeronautics Act.*

D) The Orders unjustifiably limited the political freedoms of appellant Hon. Maxime Bernier

35. By not providing an express exception for passengers wishing to travel to participate in democratic activities, the Orders breached sections 2(b) and (c), and section 3 of the Charter, which read as follows:

2. Everyone has the following fundamental freedoms:

[...]

[17] *Hills* v. *Canada (Attorney General)*, [1988] 1 SCR 513, para. 62.

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

c) freedom of peaceful assembly;

[...]

3. Every Canadian citizen has the right to vote and to be elected in federal or provincial parliamentary elections.

36. Section 3 has been interpreted liberally and in conjunction with paragraph 2(b) of the Charter. It protects the right to anticipate meaningfully in the electoral process:

> *An understanding of s. 3 that emphasizes the right of each citizen to play a meaningful role in the electoral process also is sensitive to the full range of reasons that individual participation in the electoral process is of such importance in a free and democratic society. As Dickson C.J. wrote in R. v. Oakes, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103, at p. 136:*
>
> > *The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.*
>
> *In this passage, Dickson C.J. was addressing s. 1. Yet since reference to "a free and democratic society" is essential to an enriched understanding of s. 3, this passage indicates that the best interpretation of s. 3 is one that advances the values and principles that embody a free and democratic state, including respect for a diversity of beliefs and opinions. Defining the purpose of s. 3 with reference to the right of each citizen to meaningful participation in the electoral process, best reflects the capacity of individual participation in the electoral process to enhance the quality of democracy in this country. As this Court frequently has acknowledged, the free flow of diverse opinions and ideas is of fundamental importance in a free and democratic society. In R. v. Keegstra, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697, at pp. 763-64, Dickson C.J. described the connection between the free flow of diverse*

opinions and ideas and the values essential to a free and democratic society in the following terms:

> *The connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons. Such open participation must involve to a substantial degree the notion that all persons are equally deserving of respect and dignity. The state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all.*

Put simply, full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions: see Switzman v. Elbling, 1957 CanLII 2 (SCC), [1957] S.C.R. 285, at p. 326; RWDSU v. Dolphin Delivery Ltd., 1986 CanLII 5 (SCC), [1986] 2 S.C.R. 573, at p. 583; Edmonton Journal v. Alberta (Attorney General), 1989 CanLII 20 (SCC), [1989] 2 S.C.R. 1326, at p. 1336; and R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 23. This, in turn, ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens.[18]

37. Meaningful participation in the electoral process presupposes the formation of political networks and alliances between groups representing communities. Therefore, the protection of section 3 is not only related to individual democratic activity, but also to the life of political parties[19].

38. The relevant constitutional protections are tailored to the context in which democratic rights are exercised, in light of the history of Canadian political institutions[20].

[18] *Figueroa* v. *Canada (Attorney General),* [2003] 1 SCR 912, paras. 27 and 28.
[19] *Idem*, para. 101.
[20] *Idem*, para. 102; see also *Re Provincial Electoral Districts (Sask.)*, [1991] 2 SCR 158, at pp. 186-187.

39. In a country as vast and sparsely populated as Canada, whose founding coincides with the construction of a transcontinental railway, it is natural that federal politicians travel from coast to coast to coast to animate their parties, meet with constituents, and compete for votes. The Court has judicial notice of these facts.

40. The Charter extends the protections of freedom of expression and peaceful assembly to an extra-electoral setting and focus on expressive and promotional activities carried out in a political and democratic context[21].

41. Governmental impediments to traffic, when they have the effect of preventing such activities, constitute a violation of sections 2 and 3 of the Charter[22], which enshrine a similar - albeit broader and more powerful - protection to section 81.1 of the *Canada Elections Act*[23]:

> *81.1 (1) No person in charge of any building, land, highway or other place, any part of which is open to the public free of charge on a continuous, periodic or occasional basis, including any place used for commercial, cultural, historical, educational, religious, official, entertainment or recreational purposes, shall prevent a candidate or a candidate's representative from campaigning in that part of the premises during the hours when it is so open to the public.*
>
> *Exception*
> *(2) Subsection (1) does not apply if the campaign activities are incompatible with public safety or the principal function or purpose of the place.*

42. The Orders seriously impeded the exercise of Mr. Bernier's democratic rights[24]:

a. The Hon. Maxime Bernier is the founding leader of the People's Party of Canada (PPC) and devotes himself full-time to this role.

[21] *Harper* v. *Canada (Attorney General)*, [2004] 1 SCR 827, para. 87; see also *Canada (Attorney General)* v. *Reform Party of Canada*, 1995 ABCA 107.
[22] *Little Sisters Book and Art Emporium* v. *Canada (Minister of Justice)*, [2000] 2 SCR 1120.
[23] *Canada Elections Act*, S.C. 2000, c. 9.
[24] Affidavit of the Honourable Maxime Bernier, March 13, 2022, paras. 5 to 7, 12 to 22, and 25 to 27.

b. In 2021, Mr. Bernier flew more than 79,000 km in Canada for work purposes.

c. With respect to Covid, Mr. Bernier stated that he is the only leader of a major federal political party who was frankly and openly opposed, as a matter of principle and since the beginning of the pandemic, to containment measures, restrictions on the right to travel, curfews, the mandatory closure of businesses and places of assembly, to the obligation to wear a mask in places frequented by the public, to the introduction of a vaccination passport as a prerequisite for the right to work or to obtain goods and services generally offered to the public, and to the repression of peaceful demonstrations in opposition to the so-called health measures.

d. Mr. Bernier claimed to be the only leader of a major federal political party who stood for individual freedom and responsibility, free markets, the removal of interprovincial trade barriers, reform of the equalization formula, the abolition of foreign aid (except in the case of major disasters), the abolition of corporate subsidies, the abolition of supply management in agriculture, and Canada's withdrawal from the Paris Climate Agreement and the United Nations Global Compact on Migration

e. The PPC received more than 840,000 votes (4.9%) and came fifth in the 2021 general election. Press reviews obtained by Mr. Bernier show that the major Canadian print, radio and television media paid very little attention to the PPC compared to other federal parties. According to Mr. Bernier, in order to get the CPP's political message out, more energy must be invested in alternative ways of reaching voters: conferences, rallies and other "face-to-face" activities.

f. Political activities on the ground (in person) offer the best conditions for a party leader to communicate with constituents. Indeed, there is no substitute for human presence.

g. As the leader of a national party, Mr. Bernier feels he must reach out to thousands of people each year and participate in a variety of political and intellectual activities in every region of the country: meeting with members of the PPC's county associations, giving speeches at universities and chambers of commerce across the country, meeting with potential candidates for the party, helping to build the PPC 's infrastructure in every constituency.

h. According to Mr. Bernier, the reality of the regions is difficult to grasp through the prism of the mainstream media alone, because those media are essentially metropolitan. In his experience, there is no substitute for a visit to the region to get a good feel for regional issues and the pulse of the population, local businesses and organisations.

i. The opportunity to meet people in person is also particularly important for older voters who are often less familiar with the Internet and information technology.

j. Mr. Bernier stated that the PPC could afford to charter a plane for its political activities. This would represent an expense of several thousand dollars per trip.

k. Mr. Bernier lives in Montreal with his wife. On a quarterly or yearly basis, travel other than by air was only reasonably feasible within a relatively small radius of his home. Travelling tens of thousands of kilometres by car or bus would have taken much longer than an efficient schedule would allow.

l. The Orders made Mr. Bernier the only leader of a major federal party who was prevented from travelling by air to carry out his political mission, which ironically included challenging the government's Covid measures.

m. Between January and June of 2022, as a result of the Orders, Mr. Bernier was forced to forego several democratic activities that were part of his normal political duties. He was unable to participate as a speaker at rallies in Calgary in January, in St. John's, Newfoundland and Labrador in February and in Victoria, British Columbia.

43. Where democratic rights are infringed, courts must conduct a rigorous analysis of the justification offered by the Crown – whose burden it is under section 1 of the Charter. No deference is owed[25] :

> *The core democratic rights of Canadians do not fall within a "range of acceptable alternatives" among which Parliament may pick and choose at its discretion. Deference may be appropriate on a decision involving competing social and political policies. It is not appropriate, however, on a decision to limit fundamental rights.* […] *Public debate on an issue does not transform*

[25] *Sauvé* v. *Canada (Chief Electoral Officer)*, [2002] 3 SCR 519, para. 13.

it into a matter of "social philosophy", shielding it from full judicial scrutiny. It is for the courts, unaffected by the shifting winds of public opinion and electoral interests, to safeguard the right to vote guaranteed by s. 3 of the Charter.

44. In this Memorandum, we will not enter a detailed discussion on the expert reports and testimony under section 1 of the Charter. Suffice it to say that the evidence on which we intend to argue that point at trial is copious.

45. The immediate consequence of the Orders was to hamper the democratic activity of a federal party leader, his supporters and, more generally, his interlocutors. They prevented the holding of various meetings, rallies and fundraising events. In other words, the Orders, ordered by the Prime Minister and issued by a member of his party[26], had the effect of silencing a minority voice.

46. The Orders created a situation of unfair competition in favour of Mr. Bernier's "vaccinated" opponents. We cannot have a two-tier democracy in Canada. When the party in power adopts measures that have the direct effect of harming its competitors in the latter's capacity to participate in democracy, courts must intervene to restore a balance without which our Constitution would be nothing but a parchment guarantee.

47. The Measures have thus struck at the heart of the Canadian democratic tradition, threatening the rule of law in the process[27]. The meagre benefits of the Orders, if any (we deny it), did not justify such a threat to our fundamental political institutions.

*E) **The Rule of Law and public interest demand a trial on the merits***

48. The Rule of Law, according to Canadian constitutional case law, entails:

a. "*First, that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power.*"[28]

[26] Mission letter of December 16, 2021, Annex A to the Affidavit of the Honourable Maxime Bernier (dated March 12, 2022)
[27] *Sauvé* v. *Canada (Chief Electoral Officer)*, [2002] 3 SCR 519, para. 9.
[28] *Re Manitoba Language Rights*, [1985] 1 SCR 721, p. 748.

b. "*Second*, […] *the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order*."[29]

c. "*A third aspect of the rule of law is,* […], *that "the exercise of all public power must find its ultimate source in a legal rule". Put another way, the relationship between the state and the individual must be regulated by law*."[30]

49. The principle of legality was imported in Canada via the common law and the preamble of the *Constitution Act 1867*, which reads:

> *"Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom".*

50. It was further elevated in the preamble of the Charter and in section 52 of the *Constitution Act 1982*:

> *"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law"*
>
> […]
>
> *"52 (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."*

51. It has become the norm, in Canadian constitutional case law, not to dwell on the supremacy of God as an interpretative principle, but thankfully courts have not dispensed with the Rule of Law. While reasonable people can debate who has the upper hand between the Legislative and the Judiciary (or when or why), supremacy of the Executive branch was never a thing, except possibly when it comes to remedies against certain Crown prerogatives – the Orders do not fall within that narrow, vestigial category.

[29] *Re Manitoba Language Rights*, [1985] 1 SCR 721, p. 749.
[30] *Reference re Secession of Quebec*, [1998] 2 SCR 217, para. 71.

52. In *Re Manitoba Language Rights*, [1985] 1 SCR 721, the Supreme Court of Canada unanimously stated:

> *"64. Additional to the inclusion of the rule of law in the preambles of the Constitution Acts of 1867 and 1982, the principle is clearly implicit in the very nature of a Constitution. The Constitution, as the Supreme Law, must be understood as a purposive ordering of social relations providing a basis upon which an actual order of positive laws can be brought into existence. The founders of this nation must have intended, as one of the basic principles of nation building, that Canada be a society of legal order and normative structure: one governed by rule of law. While this is not set out in a specific provision, the principle of the rule of law is clearly a principle of our Constitution.*
>
> *65. This Court cannot take a narrow and literal approach to constitutional interpretation. The jurisprudence of the Court evidences a willingness to supplement textual analysis with historical, contextual and purposive interpretation in order to ascertain the intent of the makers of our Constitution."*

53. If it is the "*Legislature's duty to comply with the "supreme law" of this country"*[31], it is *a fortiori* the Executive's duty to do so when it exercises limited, delegated law-making powers under section 6.41 of the *Aeronautics Act*.

54. In the *Reference re Secession of Quebec*, [1998] 2 SCR 217, the Supreme Court of Canada unanimously ruled:

> *"50. Our Constitution has an internal architecture, or what the majority of this Court in OPSEU v. Ontario (Attorney General), 1987 CanLII 71 (SCC), [1987] 2 S.C.R. 2, at p. 57, called a "basic constitutional structure". The individual elements of the Constitution are linked to the others, and must be interpreted by reference to the structure of the Constitution as a whole. As we recently emphasized in the Provincial Judges Reference, certain underlying principles infuse our Constitution and breathe life into it. Speaking of the rule of law principle in the Manitoba Language Rights Reference, supra, at p. 750, we held that "the principle is clearly implicit in the very nature of a Constitution". The same may be said of the other three constitutional principles we underscore today.*
>
> *51. Although these underlying principles are not explicitly made part of the Constitution by any written provision, other than in some respects by the oblique reference in the preamble to the* Constitution Act, 1867*, it would be impossible to conceive of our constitutional structure without them. The*

[31] *Re Manitoba Language Rights*, [1985] 1 SCR 721, para. 67.

principles dictate major elements of the architecture of the Constitution itself and are as such its lifeblood.

52. The principles assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions. Equally important, observance of and respect for these principles is essential to the ongoing process of constitutional development and evolution of our Constitution as a "living tree", to invoke the famous description in Edwards v. Attorney-General for Canada, 1929 CanLII 438 (UK JCPC), [1930] A.C. 124 (P.C.), at p. 136. As this Court indicated in New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly), 1993 CanLII 153 (SCC), [1993] 1 S.C.R. 319, Canadians have long recognized the existence and importance of unwritten constitutional principles in our system of government.

53. Given the existence of these underlying constitutional principles, what use may the Court make of them? In the Provincial Judges Reference, supra, at paras. 93 and 104, we cautioned that the recognition of these constitutional principles (the majority opinion referred to them as "organizing principles" and described one of them, judicial independence, as an "unwritten norm") could not be taken as an invitation to dispense with the written text of the Constitution. On the contrary, we confirmed that there are compelling reasons to insist upon the primacy of our written constitution. A written constitution promotes legal certainty and predictability, and it provides a foundation and a touchstone for the exercise of constitutional judicial review. However, we also observed in the Provincial Judges Reference that the effect of the preamble to the Constitution Act, 1867 *was to incorporate certain constitutional principles by reference, a point made earlier in Fraser v. Public Service Staff Relations Board, 1985 CanLII 14 (SCC), [1985] 2 S.C.R. 455, at pp. 462-63. In the Provincial Judges Reference, at para. 104, we determined that the preamble "invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text".*

54. Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have "full legal force", as we described it in the Patriation Reference, supra, at p. 845), which constitute substantive limitations upon government action. These principles may give rise to very abstract and general obligations, or they may be more specific and precise in nature. The principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments. "In other words", as this Court confirmed in the Manitoba Language Rights Reference, supra, at p. 752, "in the process of Constitutional adjudication, the Court may have regard to unwritten postulates which form the very foundation of the Constitution of Canada". It is to a discussion of those underlying constitutional principles that we now turn."

55. Covid management by Canadian public authorities was a tragicomic series of inefficient, incoherent, scientifically dubious, ideologically charged, often authoritarian policies which lacked any demonstrable causal connection to the resolution of the crisis.

56. The Orders were adopted and implemented against a backdrop of discrimination and hatred of those not vaccinated against Covid. Even the Prime Minister called them racist, misogynistic, homophobic, without a shred of evidence[32].

57. The Orders have sparked constitutional debates of an importance and intensity at least equal to those which have surrounded, for example, life imprisonment for mass killers[33], gay marriage[34], racial profiling[35], laicity of the State[36], and assisted suicide[37]. Canadian courts did not shy away from making landmark rulings in those cases, despite all the delicate social and political underpinnings.

58. For the thousands of Canadians who did not join the mass panic surrounding Covid, the years 2020-2022 epitomize governmental arbitrariness. Most of the so-called "health measures" were imposed by *fiat*, without serious parliamentary or judicial scrutiny. Such is the case of the impugned Orders.

59. In support of the Orders, the Respondent put forward witnesses who i) refused to disclose any medical or scientific advice provided to the Cabinet, if any; and ii) admitted that personal freedom was not even considered in their assessment of public health policies. Such secretiveness and blatant disregard for fundamental rights on the part of our government is truly outrageous and sets a dangerous precedent.

60. This is not a case where judicial economy trumps other considerations. It is rather one of the rare situations where failing to rule on the merits would amount to tacit approval of the abuse of Executive powers.

[32] Schedules E and F to the Affidavit of the Honourable Maxime Bernier (March 13, 2022)
[33] *R.* v. *Bissonnette*, 2022 SCC 23
[34] *Reference re Same-Sex Marriage*, 2004 SCC 79
[35] *Luamba* c. *Procureur général du Québec*, 2022 QCCS 3866
[36] *Mouvement laïque québécois* v. *Saguenay (Ville)*, 2015 SCC 16; *Hak* c. *Procureur général du Québec*, 2021 QCCS 1466.
[37] *Carter* v. *Canada (Attorney General)*, 2015 SCC 5

61. The notion of "public interest" under the second prong of the *Borowski* test cannot be artificially disconnected from the notion of "public interest" in debates over *locus standi*. Public interest *here* is the same as public interest *there*, and the Supreme Court of Canada has consistently broadened the notion of "public interest standing" over the years because of its intricate connexion with the Rule of Law (or "legality principle").

62. In the recent case *British Columbia (Attorney General)* v. *Council of Canadians with Disabilities*, 2022 SCC 27, the Supreme Court elaborated on the interrelation between public interest standing and the Rule of Law:

> *"[29] In Downtown Eastside, this Court explained that each factor is to be "weighed . . . in light of the underlying purposes of limiting standing and applied in a flexible and generous manner that best serves those underlying purposes" (para. 20). These purposes are threefold: (i) efficiently allocating scarce judicial resources and screening out "busybody" litigants; (ii) ensuring that courts have the benefit of the contending points of view of those most directly affected by the issues; and (iii) ensuring that courts play their proper role within our democratic system of government (para. 1).*
>
> *[30] Courts must also consider the purposes that justify granting standing in their analyses (Downtown Eastside, at paras. 20, 23, 36, 39-43, 49-50 and 76). These purposes are twofold: (i) giving effect to the principle of legality and (ii) ensuring access to the courts, or more broadly, access to justice (paras. 20, 39-43 and 49). The goal, in every case, is to strike a meaningful balance between the purposes that favour granting standing and those that favour limiting it (para. 23).*
>
> *[31] Downtown Eastside remains the governing authority. Courts should strive to balance all of the purposes in light of the circumstances and in the "wise application of judicial discretion" (para. 21). It follows that they should not, as a general rule, attach "particular weight" to any one purpose, including legality and access to justice. Legality and access to justice are important — indeed, they played a pivotal role in the development of public interest standing — but they are two of many concerns that inform the Downtown Eastside analysis.*
>
> *[32] To demonstrate this, I will define legality and access to justice, review their role in the development of public interest standing, and situate them in the Downtown Eastside framework. I conclude that the Court of Appeal was wrong to attach "particular weight" to these principles in its analysis.*
>
> […]
>
> *[33] The legality principle encompasses two ideas: (i) state action must conform to the law and (ii) there must be practical and effective ways to*

challenge the legality of state action (Downtown Eastside, at para. 31). Legality derives from the rule of law: "[i]f people cannot challenge government actions in court, individuals cannot hold the state to account — the government will be, or be seen to be, above the law" (Trial Lawyers Association of British Columbia v. British Columbia (Attorney General), 2014 SCC 59, [2014] 3 S.C.R. 31, at para. 40).

[34] Access to justice, like legality, is "fundamental to the rule of law" (Trial Lawyers, at para. 39). As Dickson C.J. put it, "[t]here cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice" (B.C.G.E.U. v. British Columbia (Attorney General), 1988 CanLII 3 (SCC), [1988] 2 S.C.R. 214, at p. 230).

[35] Access to justice means many things, such as knowing one's rights, and how our legal system works; being able to secure legal assistance and access legal remedies; and breaking down barriers that often prevent prospective litigants from ensuring that their legal rights are respected. For the purposes of this appeal, however, access to justice refers broadly to "access to courts" (see, e.g., G. J. Kennedy and L. Sossin, "Justiciability, Access to Justice and the Development of Constitutional Law in Canada" (2017), 45 Fed. L. Rev. 707, at p. 710).

[36] In Downtown Eastside, this Court recognized that access to justice is symbiotically linked to public interest standing: the judicial discretion to grant or deny standing plays a gatekeeping role that has a direct impact on access (para. 51). Public interest standing provides an avenue to litigate the legality of government action in spite of social, economic or psychological barriers to access which may preclude individuals from pursuing their legal rights.

[…]

[37] Legality and access to justice are woven throughout the history of public interest standing. In Thorson v. Attorney General of Canada, 1974 CanLII 6 (SCC), [1975] 1 S.C.R. 138, for example, the Court relied primarily on the principle of legality to recognize the judicial discretion to grant public interest standing (p. 163). In that case, the Court granted a litigant standing to challenge a law that did not directly affect him, reasoning that a constitutional question should not "be immunized from judicial review by denying standing to anyone to challenge the impugned statute" (p. 145).

[38] Legality was again at issue in Nova Scotia Board of Censors v. McNeil, 1975 CanLII 14 (SCC), [1976] 2 S.C.R. 265, a case in which the Court granted standing even though it would have been possible for someone more directly affected by the law to initiate private litigation. In that case, the Court permitted a newspaper editor — a member of the public — to challenge censorial powers granted to an administrative body. Theatre owners and operators were more directly affected by the legislation than the general

> *public, but the Court reasoned that challenges from those individuals were unlikely. Since there was "no other way, practically speaking, to subject the challenged Act to judicial review," the Court granted a member of the public standing to seek a declaration that the legislation was constitutionally invalid (p. 271).*
>
> *[39] Access to justice featured alongside the principle of legality in Finlay v. Canada (Minister of Finance), 1986 CanLII 6 (SCC), [1986] 2 S.C.R. 607, this Court's first post-Charter case on public interest standing. There, the Court granted standing and emphasized "the importance in a federal state that there be some access to the courts to challenge the constitutionality of legislation" (p. 627). It also observed that the rationale behind discretionary standing was the public interest in maintaining respect for "the limits of statutory authority" (pp. 631-32).*
>
> *[40] Finally, in Canadian Council of Churches v. Canada (Minister of Employment and Immigration), 1992 CanLII 116 (SCC), [1992] 1 S.C.R. 236, this Court relied on legality to deny public interest standing. The Court underscored "the fundamental right of the public to government in accordance with the law" and acknowledged that the "whole purpose" of public interest standing is "to prevent the immunization of legislation or public acts from any challenge" (pp. 250 and 252). Because the measure had already been "subject to attack" by private litigants, granting public interest standing was "not required" (pp. 252-53)."*

63. Unlike a hypothetical "public interest litigant", the applicant Hon. Maxime Bernier was personally aggrieved by the Orders, and seriously so. More importantly, the balance between constitutional institutions in Canada was gravely undermined by the Executive's high-handed behaviour.

64. The paramount "public interest", here, is in affirming the Rule of Law against governmental arbitrariness and constitutional delinquency.

PART IV – Order sought

65. The appellant asks that this Honourable Court:

a. Order that the decision of the Hon. Gagné ACJ dated October 20, 2022, be set aside;

b. Order that the Application proceed to a hearing on the merits; and

c. Make any other Order that this Honourable Court considers fair and appropriate.

d. Costs against the Crown, considering the public interest in seeking final determination on the important legal and constitutional issues raised herein.

The whole, respectfully submitted this 13th day of April 2023.

Samuel Bachand, avocat | LIS s.a.
Attorney to Appellant Hon. Maxime Bernier

PART V – LIST OF AUTHORITIES

Tab	Cases Cited
1	*Borowski* v. *Canada,* [1989] 1 SCR 342
2	*Vancouver (City)* v. *Ward,* 2010 SCC 27
3	*Dixon* v. *Canada (Governor in Council) (C.A.),* 1997 CanLII 6145 (FCA), [1997] 3 FC 169
4	*Glynos* v. *Canada,* 1992 CanLII 8572 (FCA)
5	*Spencer* v. *Canada (Health),* 2021 FC 621
6	*Monsanto* v. *Canada (Health),* 2020 FC 1053
7	*Canadian Constitution Foundation* v. *Attorney General of Canada,* 2021 ONSC 4744
8	*Turmel* v. *Canada*, 2021 FC 1095
9	*Wojdan* v. *Canada (Attorney General)*, 2021 FC 1341
10	*Neri* v. *Canada*, 2021 FC 1443
11	*Zbarsky* v. *Canada*, 2022 FC 195
12	*Taylor* v. *Newfoundland and Labrador*, 2020 NLSC 125
13	*Ingram* v. *Alberta (Chief Medical Officer of Health)*, 2020 ABQB 806
14	*Beaudoin* v. *British Columbia*, 2021 BCSC 512
15	*Lachance* c. *Procureur général du Québec*, 2021 QCCS 4721
16	*Murray et al.* v. *Attorney General of New Brunswick*, 2022 NBQB 27

17	*Syndicat des métallos, section locale 2008* c. *Procureur Général du Canada*, 2022 QCCS 2455
18	*Cojocaru* v. *British Columbia Women's Hospital and Health Centre*, [2013] 2 SCR 357
19	*Wolf* v. *The Queen*, [1975] 2 SCR 107
20	*R.* v. *Sullivan*, 2022 SCC 19
21	*Katz Group Canada* v. *Ontario (Health and Long-Term Care)*, 2013 SCC 64
22	*Syncrude Canada* v. *Canada (Attorney General)*, 2016 FCA 160
23	*Figueroa* v. *Canada (Attorney General)*, [2003] 1 SCR 912
24	*Re Provincial Electoral Districts (Sask.)*, [1991] 2 SCR 158
25	*Harper* v. *Canada (Attorney General)*, [2004] 1 SCR 827
26	*Canada (Attorney General)* v. *Reform Party of Canada*, 1995 ABCA 107
27	*Little Sisters Book and Art Emporium* v. *Canada (Minister of Justice)*, [2000] 2 SCR 1120
28	*Re Manitoba Language Rights*, [1985] 1 SCR 721
29	*Reference re Secession of Quebec*, [1998] 2 SCR 217
30	*R.* v. *Bissonnette*, 2022 SCC 23
31	*Reference re Same-Sex Marriage*, 2004 SCC 79
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33	*Mouvement laïque québécois* v. *Saguenay (Ville)*, 2015 SCC 16

34	*Hak* c. *Procureur général du Québec*, 2021 QCCS 1466
35	*Carter* v. *Canada (Attorney General)*, 2015 SCC 5
36	*British Columbia (Attorney General)* v. *Council of Canadians with Disabilities*, 2022 SCC 27
	Acts and Legislation
37	*Constitution Act 1982*
38	*Constitution Act 1867*
39	*Canadian Bill of Rights*, SC 1960, c. 44
40	*Canada Elections Act*, S.C. 2000, c. 9
41	*Aeronautics Act*, RSC 1985, c. A-2
	Orders in Council
42	*Interim Order Respecting Battery-powered Hand-held Lasers*, P.C. 2018-986
43	*Interim Order Respecting the Use of Model Aircraft*, P.C. 2018-732
44	*Interim Order Respecting Certain Training Requirements (B-737-8 and Other Aircraft)*, P.C. 2021-97
45	*Interim Order No. 5 Respecting Flight Deck Occupants*, P.C. 2016-649