**FORM 301 Rule 301**

# Notice of Application

Court File No. T-2547-23

FEDERAL COURT
COUR FÉDÉRALE
FILED / DÉPOSÉ
30-nov-2023
Rachel Villeneuve

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**FEDERAL COURT**

BETWEEN:

NICOLAS JUZDA

Applicant

and

THE ATTORNEY GENERAL OF CANADA and
ELECTIONS CANADA

Respondents

APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 18.1 OF THE FEDERAL COURTS ACT

# Notice of Application

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date 30-NOV-2023 Issued by: Rachel Villeneuve
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, Ontario, K1A 0H9

TO:

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario, K1A 0H8

AND TO:

ELECTIONS CANADA
30 rue Victoria
Gatineau, Quebec, K1A 0M6

AND TO:

HEAD OF COMPLIANCE AND ENFORCEMENT,
LABOUR PROGRAM - EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA
750-360 Laurier Avenue West
Narono Building
Ottawa, Ontario, K1P 1C8

# Application

This is an application for judicial review in respect of:

> the decision of the Head of Compliance and Enforcement, Labour Program - Employment and Social Development Canada, dated November 1, 2023 (but provided to the Applicant on November 3, 2023), signed by Marie-France Sanschagrin, Regional Director, Official delegated by the Head, in Case No. 2023-OHS-SST-0006486, pursuant to s. 129(1) of the Canada Labour Code that the Applicant's refusal of work that constitutes a danger (under s. 128), was "frivolous" and that therefore the Head would not perform an investigation.
>
> Because the Head's decision rests on numerous unreasonable implicit and explicit findings of fact and law that would also affect any subsequent investigation and decision pursuant to s. 129(4) as to whether a danger exists, this is an application for judicial review of the reasonableness of all such findings within the Head's decision as well as the overall decision not to investigate.

The Applicant makes application for:

1. Judicial review of the decision of the Head of Compliance and Enforcement, Labour Program - Employment and Social Development Canada (the "**Head**"), signed by Marie-France Sanschagrin, Regional Director, Official delegated by the Head, and dated November 1, 2023, in Case No. 2023-OHS-SST-0006486 (the "**Decision**").
2. An order declaring that the Decision is not justified, transparent, and intelligible, and is therefore unreasonable.
3. An order declaring that the Decision is not based on an internally consistent and rational chain of analysis, and is therefore unreasonable.
4. An order declaring that the Decision is not justified in relation to the facts and law that constrain the decision maker, and is therefore unreasonable.
5. An order declaring that the Decision does not consider or apply binding precedents in which the same provision was interpreted and does not explain why a different interpretation is preferable, and is therefore unreasonable.
6. An order declaring that the Decision interprets the Canada Labour Code (the "**CLC**") in a manner inconsistent with its text, context, and purpose, and is therefore unreasonable.
7. An order declaring that the Decision fundamentally misapprehends and fails to consider the evidence before the Head and contains conclusions that are not based on evidence that was actually before the Head, and is therefore unreasonable.
8. An order declaring that the Decision does not meaningfully grapple with key issue and central arguments raised by the Applicant, and is therefore unreasonable.

9. An order declaring that the Decision lacked procedural fairness, and is therefore unreasonable.

10. An order declaring that the Decision is unreasonable and therefore invalid.

11. An order in the nature of *certiori* that the Decision be quashed.

12. An order remitting the question of whether the matter is "frivolous" to the Head for reconsideration with the benefit of the Court's reasons and with instructions from the Federal Court.

13. In the alternative, an order declaring that the matter is not "frivolous" and remitting the matter to the Head to proceed with an investigation and make a decision as to whether there is a danger pursuant to s. 129(4) of the CLC, with the benefit of the Court's reasons and with instructions from the Federal Court.

14. In the further alternative, an order declaring and directing that there is a "danger" as defined for the purposes of CLC s. 128 ("**s. 128**") and CLC s. 129 ("**s. 129**"), and remitting the matter to the Head to make a direction pursuant to s. 145(2) of the CLC.

15. In the further alternative, an order declaring that there is a "danger" as defined for the purposes of s. 128 and s. 129, and such further order as the Court deems appropriate to correct the danger and protect any person from the danger.

16. In the further alternative, the Court make any of the above orders but remitting the matter to the Labour Board instead of the Head, if the Court deems this just.

17. In the further alternative, the Court make any of the above orders and then hear any remaining outstanding aspects of the matter itself, instead of remitting the matter.

18. An order directing that any aspect of this matter remitted to the Head be considered by different decision makers, defined broadly to include employees of the Head who play a significant role in the making of decisions and not just the person making the final decision, from the ones involved in the Decision.

19. An order directing the Head to give the Applicant the opportunity to present his case fully and fairly.

20. An order directing the Head to receive and review all relevant evidence that the Applicant seeks to provide.

21. An order declaring and directing that s. 128 and s. 129 offer equal protection and rights to employees whether a danger is due to illness or injury.

22. An order declaring and directing that the legal test for determining whether a "danger" exists under s. 128 and s. 129 set out by the Occupational Health and Safety Tribunal Canada in *Correctionl Service of Canada v. Ketcheson* (2016 OHSTC 19) (the "***Ketcheson* Test**") is as a matter of law the correct test to be followed to determining whether a danger exists in this matter.

23. An order declaring and directing that whether the employer is adhering to the COVID-19 guidelines of the Treasury Board Secretariat ("**TBS**"), the Public

Health Agency of Canada ("**PHAC**"), and/or Public Services and Procurement Canada ("**PSPC**") is as a matter of law not the correct test for determining whether a "danger" exists under s. 128 and s. 129.

24. An order directing that the Applicant's evidence regarding the danger posed by COVID-19 be given appropriate weight as relevant factual evidence.

25. An order directing that evidence relating to the capability and probability (though not certainty) of COVID-19 infections causing long-term or permanent effects be given appropriate weight as relevant factual evidence.

26. An order directing that evidence relating to the likelihood (though not certainty) of COVID-19 infected individuals being at the Elections Canada ("**EC**") office in future be given appropriate weight as relevant factual evidence.

27. An order directing that the Head meaningfully grapple with the Applicant's key issues and central arguments, including but not limited to:

    (a) COVID-19 remains prevalent in the National Capital Region;

    (b) COVID-19 is an airborne disease with all the consequences that entails;

    (c) COVID-19 has a significant chance of causing long-term or permanent effects;

    (d) COVID-19 is commonly transmitted by asymptomatic and pre-symptomatic carriers; and

    (e) The specific mitigation measures in place will be ineffective or insufficient to eliminate or render negligible the danger of COVID-19.

28. An order directing that any finding regarding the mitigation measures in place requires not only that the Head look at the actions of EC, but that the Head look at the success of those actions in eliminating or controlling the danger, or it would be unreasonable.

29. An order declaring and directing that there have been known cases of COVID-19 at the EC office location, and it would be unreasonable to find otherwise.

30. In the alternative, an order declaring and directing that it would be unreasonable to find that there have been no known cases of COVID-19 at the EC office location.

31. In the alternative, an order directing that the Head's investigation pursuant to s. 129 include a substantial investigation into whether there have been known cases of COVID-19 at the EC office location, including making inquiries throughout EC.

32. An order declaring and directing that the Applicant's lack of known medical conditions and vaccination status should not be considered or should be given little or no weight.

33. An order declaring and directing that a "danger" may exist under s. 128 and s. 129 even if the guidelines of TBS, PHAC, and/or PSPC are being adhered to,

and that it is within the discretion of the Head to find as much and issue resultant directions pursuant to s. 145(2) of the CLC, and that the Head must not fetter their discretion in this regard.

34. An order declaring and directing that, since TBS is the employer or the "parent" of the employer, TBS policies have no more weight in this matter than the policies of any employer would have in any s. 128 and s. 129 matter, and are subject to the same scrutiny as would be applied to the policies of any other employer.

35. An order declaring and directing that any finding that EC is following TBS, PHAC, and/or PSPC guidelines is unreasonable unless:

    (a) The specific guidelines in question have been clearly identified;

    (b) The specific steps EC is taking or is failing to take, in accordance with those guidelines, have been clearly identified, reviewed and taken into consideration; and

    (c) The process and outcomes of any decision EC made as to how to apply those guidelines in its specific circumstances, including but not limited to EC's choices as to which of the possible precautions suggested in the guidelines would be implemented by EC and the manner in which it would be doing so, have been reviewed and taken into consideration.

36. An order declaring and directing that, unless evidence has been provided regarding the data and analysis underlying the guidelines of TBS, PHAC, and/or PSPC such that they can be evaluated and questioned on their merits, it would be unreasonable to give evidentiary weight to such guidelines.

37. An order declaring and directing that, unless evidence has been provided that the guidelines of TBS, PHAC, and/or PSPC are based solely on factors relevant to s. 128 and s. 129 of the CLC and not other competing political, policy, or economic goals, or alternatively unless evidence has been provided such that it is possible to evaluate the impact of such other considerations upon the guidelines, it would be unreasonable to give evidentiary weight to such guidelines in any analysis pursuant to s. 128 or s. 129.

38. An order declaring and directing that, unless evidence has been provided regarding the expected outcome of the guidelines of TBS, PHAC, and/or PSPC, it would be unreasonable to give weight to such guidelines in any analysis of whether a danger exists pursuant to s. 128 and 129.

39. An order declaring and directing that the frequency of an employer's assessments of its mitigation measures is not a reasonable consideration to take into account when making a determination as to whether a danger currently exists pursuant to s. 128 and 129.

40. In the alternative, an order directing the Head to include in the scope of the Head's investigation an inquiry into the nature, scope, participants, evidence, analysis, conclusions, and similar details of the frequent assessments EC is performing of its security measures.

41. An order declaring or directing that, for the purpose of the first part of the *Ketcheson* Test, the condition is prolonged sharing of indoor airspace with other employees of EC who may be infected with COVID-19 without adequate mitigation measures to prevent airborne transmission, or alternatively that COVID-19 itself is the hazard.

42. An order declaring and directing that if there is evidence demonstrating that COVID-19 has a significant chance of causing long-term or permanent effects (such as, but not necessarily, cognitive issues, fatigue, or immune system damage), then it would be a serious threat for the purposes of the second branch of the second part of the *Ketcheson* Test for "danger" under s. 128 ("could this hazard, condition or activity reasonably be expected to be a serious threat to the life or health of a person exposed to it"), and any other conclusion would be unreasonable.

43. An order declaring and directing that, on the basis of evidence already contained in the history and context of these proceedings, COVID-19 is a serious threat for the purposes of the second branch of the second part of the *Ketcheson* Test for "danger" under s. 128 ("could this hazard, condition or activity reasonably be expected to be a serious threat to the life or health of a person exposed to it"), and any other conclusion would be unreasonable.

44. An order declaring and directing that if there is evidence demonstrating that COVID-19 is or regularly becomes prevalent in the National Capital Region, then for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there would be a reasonable probability that over the coming weeks and months there would be COVID-19 in the presence of the Applicant at 30 Victoria, and any other conclusion would be unreasonable.

45. An order declaring and directing that if there is evidence demonstrating that EC employees who work at the EC office location have had COVID since March of 2023, then the for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there would be a reasonable probability that over the coming weeks and months there would be COVID-19 in the presence of the Applicant at 30 Victoria, and any other conclusion would be unreasonable.

46. An order declaring and directing that, on the basis of evidence already contained in the history and context of these proceedings, for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there is a reasonable probability that over the coming weeks and months there would be COVID-19 in the presence of the Applicant at 30 Victoria, and any other conclusion would be unreasonable.

47. An order declaring and directing that if there is evidence demonstrating that COVID-19 is a highly contagious disease with airborne transmission, then for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there would be a reasonable probability that the hazard will cause an exposure, and any other conclusion would be unreasonable.

48. An order declaring and directing that, on the basis of evidence already contained

in the history and context of these proceedings, for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there is a reasonable probability that the hazard will cause an exposure, and any other conclusion would be unreasonable.

49. In the alternative, an order declaring and directing that, on the basis of evidence already contained in the record of this matter, for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there is a reasonable probability that the hazard will cause an exposure, subject to any further evidence the parties may provide regarding whether or not the specific mitigation measures in place will succeed at eliminating or controlling the airborne transmission of COVID-19.

50. An order declaring and directing that if there is evidence demonstrating that COVID-19 has a significant chance of causing long-term or permanent effects, then for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there would be a reasonable probability that the exposure will cause harm to a person, and any other conclusion would be unreasonable.

51. An order declaring and directing that, on the basis of evidence already contained in the history and context of these proceedings, for the purposes of establishing a reasonable expectation under the second part of the *Ketcheson* Test, there is a reasonable probability that the exposure will harm a person, and any other conclusion would be unreasonable.

52. An order declaring and directing that, on the basis of evidence already contained in the history and context of these proceedings, the second branch of the second part of the *Ketcheson* Test for "danger" under s. 128 ("could this hazard, condition or activity reasonably be expected to be a serious threat to the life or health of a person exposed to it") has already been met, and any other conclusion would be unreasonable.

53. An order declaring and directing that if there is evidence that COVID-19 can be spread by asymptomatic, pre-symptomatic, or post-symptomatic infected individuals or by symptomatic infected individuals whose symptoms may not be immediately obvious to others, such that it would not be apparent at the time of exposure that an exposure was occurring, then the third part of the *Ketcheson* Test for "danger" under s. 128 ("will the threat to life or health exist before the hazard or condition can be corrected or the activity altered") would be met, and any other conclusion would be unreasonable.

54. An order declaring and directing that, on the basis of evidence already contained in the history and context of these proceedings, the third part of the *Ketcheson* Test for "danger" under s. 128 ("will the threat to life or health exist before the hazard or condition can be corrected or the activity altered") has already been met, and any other conclusion would be unreasonable.

55. An order declaring and directing that all three parts of the *Ketcheson* Test for "danger" under s. 128 have been met such that a danger has been found to exist, and any other conclusion would be unreasonable.

56. An order declaring that there is a reasonable apprehension of bias on the part of the decision-makers who were involved in the Decision, defined broadly to including employees of the Head who played a significant role in the making of the Decision and not just the person who made the final decision.

57. In the alternative, an order declaring that there is a reasonable apprehension of bias on the part of the Head.

58. An interim injunction restraining EC from making any further threat or taking any action against the Applicant, whether EC describes such as "discipline" or otherwise, for the Applicant's continued full-time working from home and/or otherwise refusing to participate in EC's return to office policy.

59. An order for the Applicant's costs in this matter.

60. Such further and other order as the Applicant may advise and this Honourable Court may deem just.

The grounds for the application are:

***Background***

1. Nicolas Juzda is a full-time employee of EC.

2. EC is an agency of the federal government which delivers federal elections, including general elections, by-elections, and referendums.

3. In late 2019, the disease commonly called COVID-19 was first detected in humans. By early 2020, it had spread to Canada and elsewhere in a global pandemic. It remains prevalent worldwide, including in the National Capital Region.

4. COVID-19 is a highly contagious disease spread by airborne transmission and other methods. It is particularly transmissible in indoor environments, and can be transmitted at significant distances, travelling through the air like smoke. It is spread by both symptomatic carriers and carriers who show no symptoms (asymptomatic, pre-symptomatic, or post-symptomatic).

5. In addition to being potentially fatal, a significant portion of COVID-19 infections result in one or more permanent or long-term effects, which include but are not limited to cognitive issues, fatigue, pain, immune system damage, increased risk of heart attacks and strokes, *et cetera* (**"Long COVID"**). Studies typically show that at least 10% of COVID-19 infections result in Long COVID; some studies have shown notably higher frequencies of Long COVID.

6. There is currently no known cure for COVID-19 or Long COVID. Vaccines and medical treatments may partially lower risks of infection or severity of outcome, but only partially. New variants of COVID-19 have further reduced the

effectiveness of vaccines and treatments. Previously healthy and vaccinated individuals are commonly infected with COVID-19 and commonly develop Long COVID.

7. In March of 2020, due to the onset of the COVID-19 pandemic, EC switched all or the vast majority of its employees to a full-time "work from home" arrangement, including the Applicant.

8. In March of 2021, the Applicant resumed working full-time at the EC office location, located at 30 rue Victoria, Gatineau, Quebec ("**30 Victoria**") on a purely voluntary basis, without operational requirement or instruction from EC. With the exception of a brief period surrounding the 2021 General Election, the total number of employees working at 30 Victoria was negligible from March 2021 to March 2023.

9. In December of 2022, TBS, which has overall control of almost all of the public service including EC, announced that it would be requiring almost all federal government employees to resume working at their respective office locations part-time. EC subsequently announced that its own employees would be required to work part-time at the office as of the week of March 6, 2023, with most employees required to work there two days per week.

10. EC had gradually reduced COVID-19 precautions previously in effect at 30 Victoria such that, by March of 2023 (and also as of the date of this application), the only remaining precautions or purported precautions in place were:

    (a) masks, rapid test kits, and hand sanitizer were available if employees wished to use them, but doing so was purely voluntary and not required (nor even clearly encouraged); and

    (b) employees were required to stay home when experiencing COVID-19 symptoms and/or for five days following a positive COVID-19 test.

11. On March 3, 2023, the Applicant sent EC by e-mail a report of a refusal of work that constituted a danger pursuant to s. 128(6) of the CLC (the "**s. 128(6) Report**"). In that report, the Applicant set out the nature of the danger, which included but was not limited to making the following points:

    (a) COVID-19 infections have a significant chance of resulting in Long COVID;

    (b) COVID-19 is highly transmissible, including by asymptomatic and pre-symptomatic carriers, and individuals infected with COVID-19 commonly remain contagious for around 10 days;

    (c) COVID-19 is airborne;

    (d) Vaccination does not eliminate the risks of COVID-19 and Long COVID;

    (e) COVID remains prevalent in the National Capital Region;

    (f) Following March 6, there would be a significant number of people at 30 Victoria;

    (g) The only mandatory mitigation measure still in place was that employees who experienced symptoms of COVID-19 or tested positive should remain at home for 5 days; and

(h) All other precautions previously in place had either been reduced to non-mandatory or eliminated entirely.

12. The Applicant has been working from home full-time since making the s. 128(6) Report. His direct and indirect supervisors have confirmed that the quality of his work has remained strong.

13. EC initially took the position that the s. 128(6) Report was inherently invalid and unreceivable and that therefore it was not obligated to follow the subsequent steps of the process set out in s. 128. EC's exact position during this period was not always entirely clear or consistent, but generally appeared to be the following:

(a) The Applicant's refusal of work that constituted a danger was based on conditions at a work location, while the Applicant was willing to perform the work elsewhere (his home), and that was not a refusal within the meaning of s. 128; and/or

(b) EC and/or TBS considered the situation safe, so employees could not make a report of a refusal of work that constituted a danger under s. 128.

14. During the initial period, EC made threats of disciplinary action, including threat of termination, and took disciplinary action against the Applicant, for continuing to work from home full-time.

15. EC eventually reversed its initial position, and the employer performed an investigation of the danger pursuant to s. 128(7.1) of the CLC and wrote a report (the "**s. 128(7.1) Report**") concluding that no danger was present. The s. 128(7.1) Report was provided to the Applicant on August 15, 2023. The scope of the employer's investigation and the s. 128(7.1) Report was limited to whether EC's policies were aligned with TBS and PSPC policies. The Acting Director who performed the investigation and prepared the s. 128(7.1) Report explicitly confirmed that no investigation had been done into any of the points raised in the s. 128(6) Report regarding the danger of COVID-19 in the workplace (its prevalence, its methods of transmission, the inadequacy of the remaining mitigation measures, *etc.*). In other words, no investigation was actually done as to whether the facts demonstrated that COVID-19 met the legal definition of a danger in the workplace pursuant to s. 128.

16. The Applicant continued his refusal of work that constituted a danger, and on August 19, 2023, the Applicant sent an e-mail providing his report pursuant to s. 128(9) of the CLC (the "**s. 128(9) Report**"). In the s.128(9) Report, the Applicant supplemented the points raised in the earlier s. 128(6) Report with the following, among other information and analysis:

(a) Citations and links to 24 journal articles (mostly peer-reviewed studies) to provide evidence in support of the Applicant's central points that COVID-19 causes Long COVID, that COVID-19 is airborne and spreads beyond 2 metres (6 feet), that COVID-19 is spread by asymptomatic carriers, and that

COVID-19 is contagious for up to 10 days following onset of symptoms;

(b) Specific explanations as to why various mitigation measures or purported mitigation measures in place were either ineffective or insufficient.

17. On October 18, 2023, the Applicant was provided with the report of the members of the workplace committee pursuant to either s. 128(10.1) or s.128(10.2) of the CLC (the "**s. 128(10.1/10.2) Report**"). The s. 128(10.1/10.2) Report concluded there was no danger. The reasons provided, in their entirety, were the following, attached to the s. 128(10:1/10.2) Report as Annex B:

> Investigation included discussions with employer re: investigation to date, looking at if there is an imminent danger or serious threat in the workplace as per definition applied, HVAC systems results, H&S communication provided to staff, floor access over a certain period to determine occupancy, World Health Organization COVID-19 virus status determination, etc.

18. On October 19, 2023, the Applicant notified EC that he intended to continue his refusal of work that constituted a danger. EC subsequently referred the matter to the Head, pursuant to s. 128(16).

19. At the request of the agent of the Head assigned to the matter, on October 23, 2023, the Applicant sent an e-mail to the agent of the Head summarizing the history of the proceedings to date and to which was attached various previous correspondence and documents relating to the matter.

20. On October 25, 2023, the Applicant met with the agent of the Head for about one hour. At this meeting, the agent of the Head made several statements indicating unreasonable conclusions of fact or law, and/or creating a reasonable apprehension of bias. These statements are reflected in the Decision, even when not explicitly repeated therein. They included, but were not limited to:

(a) The agent stated that if an employer was following existing policies, then even if the evidence established that a danger nonetheless existed, the Head could not find that a danger existed under s. 129 or issue an order requiring any further measures be taken to remedy the danger beyond those set out in the policies being followed;

(b) The agent stated that he would give little or no weight to evidence the Applicant had provided that COVID-19 "can" have long-term or permanent effects, because they were only a possibility and not certain;

(c) The agent made statements to the effect that "everyone is going to get COVID" and "the government may be pursuing herd immunity"; and

(d) The agent indicated that as he was also an employee of TBS, he would be unable to investigate TBS policies and/or unable to make recommendations for a decision contrary to TBS policies.

21. On November 3, 2023, the Head provided the Decision to the Applicant.

### *The Decision of the Head is Unreasonable*

22. The Decision that the matter is "frivolous" is unreasonable. The Decision is not justified, transparent, and intelligible; it is not based on an internally coherent and rational chain of analysis; it is not justified in relation to the facts and law that constrain the decision maker; it lacks procedural fairness; and it is otherwise unreasonable; for the following reasons, among other reasons:

    (a) The Decision that the matter is "frivolous" is not justifiable, or at least is not justified by the reasons in the Decision.

    (b) The impact of the decision upon the Applicant's rights and interests is severe, as it has consequences that threaten either his health or his livelihood. The reasons provided do not reflect the stakes.

    (c) The Head did not interpret or apply the binding precedent interpreting the same provision by the Honourable Mr. Justice Zinn of the Federal Court in *Justice Counsel v Attorney General of Canada* (2022 FC 1090) that an employee may make a refusal of work that constitutes a danger under s. 128 regarding the danger of COVID-19 at the work location. The Head did not explain why a different interpretation is preferable. The Head therefore ignored a constraint on what the Head could reasonably decide, and the Decision is unreasonable.

    (d) Although not explicitly stated in the Decision, when the Decision is read as a whole and in light of the history and context of the proceedings, the Decision rests upon the implicit premise that s. 128 affords limited protection if the danger relates to illness as opposed to injury. This is inconsistent with the text, context, and purpose of the CLC.

    (e) The Head did not interpret or apply the binding precedent interpreting the same provision in *Correctional Service of Canada v. Ketcheson* (2007 FC 1362) that set out the *Ketcheson* Test. The Head did not explain why a different interpretation is preferable. The Head therefore ignored a constraint on what the Head could reasonably decide, and the Decision is unreasonable.

    (f) The Head did not set out or describe the test or standard for "danger", if any, upon which the Decision was based. The Decision is therefore not justified, transparent, or intelligible and is unreasonable.

    (g) Alternatively, based on the history and context of the proceedings, the Head may have used as the legal test for danger under s. 128 and s. 129 whether EC was following the guidelines of TBS, PHAC, and/or PSPC, such that if those guidelines were being followed, no finding of danger under s. 128 or 129 could be made nor direction made pursuant to s. 145(2) of the CLC. Such a test would be inconsistent with the text, context, and purpose of these sections of the CLC. Such a test would be further unreasonable on various grounds provided below as to why the Head's conclusion that EC was following the guidelines of TBS, PHAC, and PSPC was unreasonable.

(h) Alternatively, if if the Head was applying the *Ketcheson* Test, notwithstanding that it was not explicitly invoked or otherwise apparent that is what the Head was doing, then the Decision is not justified, transparent, or intelligible; it is not based on an internally coherent and rational chain of analysis; and it is not justified in relation to the facts and law that constrain the decision maker. There is no clear connection drawn between the information in the reasons and the elements of the *Ketcheson* test. For example, the reasons do not specify whether the matter (allgedly) fails to meet the second or third parts of the *Ketcheson* Test, or if it fails to meet the second part, whether that is because the threat is not serious, or whether there is a lack of probability the hazard will be in the presence of a person, or whether there is a lack of probably the hazard will cause an exposure, or whether there is a lack of probability the exposure will cause harm to a person. Therefore, if the Decision is meant to be an application of the *Ketcheson* Test, it is not justified, transparent, or intelligible, and is unreasonable.

(i) Further, assuming that the Head was applying the *Ketcheson* Test notwithstanding that it was not explicitly invoked or otherwise apparent that is what the Head was doing, then the Head fundamentally misapprehended and failed to consider the evidence before them, and reached conclusions not based on the evidence before them, as follows:

i. The Applicant provided evidence that the effects of COVID-19 can include long-term or permanent effects such as cognitive issues, fatigue, immune system damage, increased risks of heart attacks, *et cetera*; EC provided no evidence this was not the case. Therefore, if the Decision contains an implicit finding that COVID-19 was not a serious threat, it was based on a fundamental misapprehension of the evidence, a failure to consider the evidence, not based on evidence, and unreasonable.

ii. The Applicant provided evidence demonstrating that COVID-19 is or regularly becomes prevalent in the National Capital Region; EC provided no evidence this was not the case. The Applicant also provided evidence that he was specifically aware of EC employees who have recently had COVID-19. Therefore, if the Decision contains an implicit finding that there was not a reasonable probability that in the coming weeks and months, there would be COVID-19 in the presence of the Applicant at 30 Victoria, it was based on a fundamental misapprehension of the evidence, a failure to consider the evidence, not based on evidence, and unreasonable.

iii. The Applicant provided evidence demonstrating that COVID-19 is an airborne disease that is transmissible throughout a shared airspace, including at distances well beyond 2 metres (6 feet); EC provided no evidence that this was not the case. Therefore, if the Decision contains an implicit finding that there was not a reasonable probability that COVID-19 will cause an exposure, it was based on a fundamental misapprehension of the evidence, a failure to consider the evidence, not based on evidence, and unreasonable.

iv. The Applicant provided evidence demonstrating that COVID-19 has a significant chance of causing Long COVID or other long term or permanent effects; EC provided no evidence that this is not the case.. Therefore, if the Decision contains an implicit finding that there was not a reasonable probability that exposure will cause harm to a person, it was based on a fundamental misapprehension of the evidence, a failure to consider the evidence, not based on evidence, and unreasonable.

v. The Applicant provided evidence demonstrating COVID-19 can be spread by asymptomatic, pre-symptomatic, or post-symptomatic infected individuals or by symptomatic infected individuals whose symptoms may not be immediately obvious to others, such that it would not be apparent at the time of exposure that an exposure was occurring; EC provided no evidence this was not the case. Therefore, if the decision contains an implicit finding that that the hazard or condition can be corrected or the activity altered before the threat exists, it was based on a fundamental misapprehension of the evidence, a failure to consider the evidence, not based on evidence, and unreasonable.

(j) The Decision unreasonably characterized the Applicant's position as "not based on facts", when the Applicant had provided numerous factual sources to support his claims, including citing and providing links to 24 journal articles (mostly peer-reviewed studies) in the s. 128(9) Report in support of his central claims, as well as other factual sources in that report and elsewhere, such as information from Health Canada, wastewater data, and news coverage of developments regarding COVID-19. In coming to the conclusion that the Applicant's position is "not based on facts", the Head fundamentally misapprehended or failed to account for the evidence before them.

(k) Alternatively, if the Head for some reason did not find the Applicant's evidence referred to above credible, the Head did not clearly state that and provided no reason or justification for such a determination that the Applicant's evidence lacked credibility, and the Decision is therefore not justified, transparent, or intelligible.

(l) The Head unreasonably characterized the Applicant's "concerns" as "speculative and hypothetical". The Decision did not identify which aspects of the Applicant's evidence were "speculatively and hypothetical" and it is therefore not justified, transparent, or intelligible and is unreasonable.

(m) If the Head's characterization of the Applicant's "concerns" as "speculative and hypothetical" relates to the portions of the Applicant's evidence which the agent of the Head said would be given little or no weight because they only established the serious long-term or permanent effects that COVID-19 "can" have, that was evidence as to the reasonable expectation of a serious threat to the life and health of the Applicant, as required by the *Ketcheson* Test. The law clearly allows that a s. 128 refusal may be made on the basis of a serious threat which is not necessarily imminent but there is a reasonable expectation that it will occur in future; that is supported by the CLC itself, the *Ketcheson* Test, and various other reported judgments. The

Applicant provided evidence and argument accordingly. By nature, such evidence and analysis relates to the probability on the facts of possible but not certain future events occurring. The Head fundamentally misapprehended or failed to account for the evidence before them, and the conclusion is not justified in relation to the relevant factual and legal constraints.

(n) The Head did not meaningfully grapple with any of the central points raised by the Applicant in the s. 128(6) Report, the s. 128(9) Report, and elsewhere, explaining why COVID-19 poses a danger at 30 Victoria. The Head therefore did not meaningfully account for the central issues and concerns raised by the Applicant and was not actually alert and sensitive to the subject matter before them. Although the Head did not necessarily need to respond to every single point the Applicant had raised, the Head failed to meaningfully grapple with these key issues and central arguments raised by the Applicant at all. This includes, but is not limited to:

i. The Head did not meaningfully grapple with the Applicant's central argument that COVID-19 remains prevalent in the National Capital Region;

ii. The Head did not meaningfully grapple with the Applicant's central argument that COVID-19 is an airborne disease with all the consequences that entails;

iii. The Head did not meaningfully grapple with that the Applicant's central argument that each infection with COVID-19 has a significant chance of causing Long COVID and/or other long-term or permanent health effects; and

iv. The Head did not meaningfully grapple with the Applicant's central argument that COVID-19 is commonly transmitted by asymptomatic and pre-symptomatic carriers.

Since the Decision did not meaningfully grapple with any of the central issues and concern raised by the Applicant, the Decision is unreasonable.

(o) Because the Head did not meaningfully grapple with the central arguments raised by the Applicant, it is unclear whether the Head actually accepts these points. If the Head accepts these points regarding the danger posed by COVID-19, any internally coherent and rational chain of analysis would lead inevitably to the conclusion that a danger exists for the purposes of s. 128 (using the *Ketcheson* Test or an equivalent standard) or at least that the matter is not frivolous. The Decision would therefore be unreasonable.

(p) Conversely, if the Head rejects any of these central arguments of the Applicant regarding the danger posed by COVID-19, the reasons and justification for such rejection are not found in the Decision. Therefore, the Decision is not justified, transparent, or intelligible.

(q) The Decision found that the Applicant "consider[ed] only the elements determining the risk, and not the control measures in place". The Head does not clearly specify which "control measures in place" are being referred to. The Applicant assumes, based on the history and context of the proceedings, that these are the mitigation measures referred to by the employer in the s. 128(7.1) Report. However, if the "control measures" referred to by the Head include any other mitigation measures in addition to or instead of those referred to in the s. 128(7.1) Report, these are not clearly identifiable even taking into account the history and context of the proceedings, and therefore the Decision would not be not justified, transparent, or intelligible.

(r) The Head unreasonably found that the Applicant "consider[ed] only the elements determining the risk, and not the control measures in place" when the Applicant had repeatedly provided evidence and analysis demonstrating why these control measures were inadequate to eradicate or substantially mitigate the danger, notably in the s. 128(9) Report which separately addressed various purported mitigation measures in place to explain why they were individually and collectively insufficient. The Head therefore failed to meaningfully account for one of the central issues and concerns raised by the Applicant, that the specific mitigation measures in place were variously ineffective and insufficient. Although the Head did not necessarily need to address each point raised by the Applicant as to why the mitigation measures were insufficient, the Head did not address any of them, and went so far as to state that the Applicant had not even considered these mitigation measures in his submissions. Therefore the Head failed to grapple with key issues and central arguments of the Applicant and was not actually alert and sensitive to the matter before them. The Decision is therefore unreasonable.

(s) The Head did not interpret or apply the binding precedent interpreting the same provision by the Honourable Mr. Justice O'Keefe of the Federal Court in *Union of Canadian Correctional Officers v. Canada (Attorney General)* (2008 FC 542) that it was required to not only look at the actions of the employer, but also the success of those actions in eliminating, or controlling the hazard, condition, or activity. The Head did not explain why a different interpretation is preferable. The Head therefore ignored a constraint on what the Head could reasonably decide, and the Decision is unreasonable.

(t) Alternatively, if the Head was applying the decision of the Honourable Mr. Justice O'Keefe in *Union of Canadian Correctional Officers v. Canada (Attorney General)* (notwithstanding that it was not explicitly invoked), then the Head fundamentally misapprehended or failed to account for the evidence before it. The Applicant had provided evidence that the specific mitigation measures in question would not succeed at eliminating or controlling the hazard or condition. (For example, masks are available but almost no one is using them; this mitigation will therefore not succeed at eliminating or controlling the spread of COVID-19.) Conversely, EC had at most provided evidence that actions had been taken, but had provided no evidence that those actions would succeed. Therefore, any conclusion by the Head that these actions would succeed was not based on evidence before them, and is unreasonable.

(u) Alternatively, if any evidence was provided by EC or otherwise located by the Head that the specific mitigation measures in place would succeed, then that evidence is not identified in the Decision and is not otherwise found in the history and context of the proceedings, so the Decision is not justified, transparent, or intelligible.

(v) The Head unreasonably found that there were "no known cases of Covid-19 infected employees at the above mentioned office location", without reasons or justification. There was no evidence before the Head to support this conclusion. EC had stopped tracking COVID-19 cases among its employees prior to March 2023, and so would not have been able to provide evidence that there were "no known cases". Further, this fundamentally misapprehended or failed to account for the evidence before the Head that the Applicant was aware of multiple EC employees who had recently had COVID-19. The Decision contains no reference to this evidence from the Applicant, nor reason or justification why this evidence from the Applicant was not given weight. If the Head found the Applicant's statement lacked credibility for some reason, the Head could have easily verified it by asking the Applicant to provide further information and contacting the individuals in question to confirm, but the Head took no effort to do so before rendering the Decision. At the very least, the circumstances warranted an investigation on this point. The conclusion reached was not based on evidence and is unreasonable.

(w) The Head unreasonably based the Decision in part on the fact that the Applicant has no known medical conditions and is vaccinated. This fact is provided in the Decision with no clear explanation as to its relevance, but the implication is that these factors mean there is no danger of COVID-19 to the Applicant at 30 Victoria. However, no reasons or justification are presented to support the implication that a person with no known medical condition who is vaccinated is in no danger from COVID-19. The Decision is therefore not justified, transparent, or intelligible. In reality, people with no known medical conditions and/or who are vaccinated frequently contract COVID-19 and Long COVID, as the Applicant noted in his s. 128(6) Report and mentioned to the agent of the Head in their discussion; the agent of the Head acknowledged that he himself had contracted COVID-19 after being vaccinated. The implication in the Decision that having no known medical condition and being vaccinated removes the danger of COVID-19 is therefore not based on the evidence before the Head, who either misapprehended or failed to account for the evidence before it.

(x) Assuming that the Head did not actually use adherence to TBS, PHAC, and PSPC guidelines as the (incorrect) legal test employed to determine compliance with s. 128, then the Head alternatively unreasonably fettered the discretion granted to it by the legislation by adopting the position that if EC was adhering to those guidelines, then the Head could not find that a danger existed under s. 128 nor make a direction pursuant to s. 145(2) of the CLC.

(y) Regardless of whether the Head used adherence to the TBS, PHAC, and

PSPC guidelines as a legal test, or if the Head unduly fettered its discretion in that regard, or if the Head simply gave significant evidentiary weight to such adherence, the conclusion reached that EC was following such guidelines was unreasonable, for reasons which include but are not limited to the following:

i. TBS itself is the employer or the "parent" of the employer, EC. It would be contrary to the text, context, and purpose of the CLC if an employer could evade s. 128 and s. 129 simply by setting its own policies as it wished and adhering to them, without those policies themselves being potentially subject to scrutiny and review pursuant to s. 128 and s. 129.

ii. The specific guidelines of TBS and PHAC that are being referred to are not clearly identified. Both have provided a variety of guidelines and recommendations with regard to COVID-19, guidelines which continue to evolve and indeed have evolved during the course of this process to date. Given the history and context of the proceedings, the guidelines in question might include the document "Public Service Occupational Health Program preventive practices for responding to COVID-19 in the workplace" linked to in the s. 128(7.1) Report and the s. 128(9) Report, but that appear to have been removed from the Canadian government's website since those reports were prepared or at least is no longer found at the link provided in those reports, so it is unclear if the Head would still be referring to those presumably outdated guidelines or some other guidelines that may have replaced them. Even taking into consideration the history and context of these proceedings, the Decision is not justified, transparent, or intelligible because it is unclear as to which specific guidelines are being followed.

iii. PHAC and TBS guidelines require a certain degree of independent decision-making as to what mitigation measures are appropriate in the specific circumstances and how they will be implemented. Further, PHAC's current publicly available guidelines include recommendations that EC has chosen not to implement. The history and context of the proceedings establish what actions EC is taking (and not taking), but they do not include any evidence concerning the process and bases of EC's decisions as to how it would interpret and apply the guidelines in its specific circumstances, *e.g.* which recommendations or listed options EC would implement and which it would not and why. Therefore, insofar as the Decision says only that EC is "following" these guidelines, without reason or justification, it is not justified, transparent, and intelligible, and is not based upon the evidence.

iv. The Applicant had made various submissions raising issues with regard to EC's alleged adherence to the guidelines, which were not meaningfully grappled with in the Decision. These included, but were not limited to:

(1) The factual bases of the guidelines was not known; EC had not provided (and by its own admission did not have) any information on the underlying data and analysis, the participants in the creation

of the guidelines and their qualifications, *et cetera*, and therefore the guidelines cannot be evaluated or questioned on their own merits.

(2) The guidelines may be based in part on consideration of factors other than and possibly in competition with lowering the risks of COVID-19, which would not be relevant to a s. 128 or s. 129 analysis. Sections 128 and 129 do not provide that the elimination or control of dangers in the workplace should be balanced against other political, policy, or economic goals.

Neither of these points is raised in the Decision, which does not meaningfully grapple with either of them, and simply states that EC is following the guidelines. The Head therefore did not meaningfully account for the central issues and concerns raised by the Applicant and was not actually alert and sensitive to the subject matter before them. Although the Head did not necessarily need to respond to every single point the Applicant had raised regarding EC's alleged adherence to the guidelines, the Head failed to meaningfully grapple with this key issue and central argument.

v. The Decision implicitly concludes that the expected outcome of following the guidelines would be that the danger of COVID-19 would be eliminated or controlled (as opposed to merely reduced somewhat, but with an expected outcome that would still constitute a danger under s. 128; for example if the expected outcome of the guidelines were that everyone would get infected with COVID-19 one or two times each year). The evidence does not clearly establish that TBS, PHAC, or PSPC claim that adhering to their guidelines will eliminate the danger of COVID-19 or that they even make specific claims as to the degree to which their guidelines will control that danger, let alone that there is any supporting data available. The Applicant's evidence indicates the opposite. Therefore, the implicit conclusion that adhering to the guidelines would eliminate or control any danger from COVID-19 is not based on evidence actually before the Head, the Head fundamentally misapprehended the evidence before them, and the Head failed to take into account evidence before them.

(z) The Head unreasonably found that "Security measures are frequently assessed", apparently accepting a similarly-worded unsupported assertion in the *Supplemental information supplied by the employer* section of the s. 128(10.1/10.2 Report). This was contrary to EC's own previous statements (included in the evidence) that it performs no independent assessment of security measures and simply applies TBS policies (as it understands them). Although the Head is entitled to make a finding as between various statements of EC, which one is true, no reasons or justification were provided for this determination in this case, so this aspect of the Decision is not justified, transparent, or intelligible.

(aa) The Head's finding that "security measures are frequently assessed" implicitly includes a finding that such frequent assessments were performed adequately. This conclusion was not based on the evidence before the Head. EC has provided no evidence regarding the history, nature, scope, participants, evidence reviewed, analysis, or conclusions of such assessments.

(bb) The Head's finding that "security measures are frequently assessed" is not part of an internally coherent and rational chain of analysis. There is no internally coherent and rational chain of analysis that would conclude that carrying out frequent assessments is in and of itself sufficient to mitigate a danger, separate and apart from the outcomes of such assessments. The actual mitigation measures currently in place are either sufficient on the facts to eliminate a danger or they are not. If they are not, a danger exists. The existence of a danger would itself be evidence of the inadequacy of such frequent assessments.

(cc) The s. 128(7.1) Report prepared by the employer was explicitly limited in scope to verifying the alignment of EC policies with TBS and PSPC guidelines, as the legal test or sole factor for determining whether a danger existed, and did not meaningfully grapple with the Applicant's submissions or take into consideration the Applicant's evidence, among other defects. To the extent that the Decision relies upon the s. 128(7.1) Report, it adopts these defects or at least misapprehends the evidence before the Head, and is unreasonable.

(dd) The brief reasons for the s. 128(10.1/10.2) Report were not justified, transparent, and intelligible, among other defects. To the extent that the Decision relies upon the s. 128(10.1/10.2) Report, it adopts these defects or at least misapprehends the evidence before the Head, and is unreasonable.

(ee) The Decision lacked procedural fairness because the Applicant was not given the opportunity to put forth his evidence fully and have it considered by the decision-maker, because the Applicant was invited by the agent of the Head only to provide a brief summary of the history of the proceedings to date along with the previous correspondence from that history, and the Applicant was not invited to provide a full submission of his case to the Head.

(ff) The Decision lacked procedural fairness because the Applicant was not allowed to put forth his evidence fully and have it considered by the decision-maker, because the agent of the Head refused to receive evidence that the Applicant repeatedly sought to provide prior to the Decision, specifically recordings of two meetings between the Applicant and EC, at which the Applicant had presented further evidence and explanation concerning the danger in the workplace and the lack of effective mitigation measures. The s. 128(9) Report explicitly incorporated one of these two recordings by reference. The agent of the Head informed the Applicant that he was deferring receipt and review of these materials until after the Decision was made, with such receipt and review to occur only if a decision was made that an investigation was to proceed.

(gg) The Decision may have lacked procedural fairness, if the Head considered any evidence received from EC that contained information unknown to the Applicant, or if the Head considered any evidence the Head obtained independently that contained information unknown to the Applicant, as the Applicant would have had no opportunity to respond to any such information unknown to him.

(hh) There is a reasonable apprehension of bias due to statements made by the agent of the Head to the Applicant. The duty to act fairly and therefore in a manner that does not give rise to a reasonable apprehension of bias applies to all employees of the Head who play a significant role in the making of decisions, whether they are subordinate reviewing officers, or those who make the final decision. The agent of the Head indicated that because he was an employee of TBS, he could not make any recommendations contrary to TBS policies. The agent made further statements that would suggest to a reasonable observer that his mind was not open to the possibility that COVID-19 was a danger that could or should be rectified. The agent of the Head played an important role in the process and did not act impartially, so the Decision cannot be said to have been made in an impartial manner. There is a reasonable apprehension of bias.

(ii) Such further and other grounds as the Applicant may advise and this Honourable Court may permit.

The Applicant relies on the following statutes and rules:

1. Canada Labour Code, R.S.C., 1985, c. L-2.
2. Federal Public Sector Labour Relations Act, S.C. 2003, c. 22, s. 2.
3. Federal Courts Act, R.S.C., 1985, c. F-7.
4. Federal Courts Rules, SOR/98-106.
5. Such further and other grounds as the Applicant may advise and this Honourable Court may permit.

This application will be supported by the following material:

1. The Decision.
2. Affidavit of Nicolas Juzda, which will include the following documentary exhibits:
    (a) January 18, 2023, e-mail from Nicolas Juzda to Elections Canada Occupational Health and Safety and others, subject: "COVID precautions at 30 Victoria under RTO plan".
    (b) "Post COVID-19 condition (long COVID)" webpage, Public Health Agency of Canada, Government of Canada website.
    (c) "Ottawa COVID-19 wastewater surveillance" webpage.

(d) "Behind the numbers: 3 COVID-19 takeaways from 2022", story on CBC website, December 30, 2022.

(e) "Cases of Omicron sub variant 'Kraken' emerging in Atlantic Canada", story on Global News website, January 6, 2023.

(f) "COVID-19: Symptoms, treatment, what to do if you feel unwell" webpage, Public Health Agency of Canada, Government of Canada website.

(g) March 3, 2023, e-mail from Nicolas Juzda to Sophie Martineau and others, subject: "Refusal of work that constitutes a danger".

(h) June 30, 2023, e-mail from Christopher Morris to Nicolas Juzda and others, subject: "Letter - Refusal to Return to EC Workplaces".

(i) Letter dated June 2, 2023, from Jennifer Maguire to Nicolas Juzda, subject: "Refusal to work".

(j) June 30, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "RE Letter - Refusal to Return to EC Workplaces".

(k) July 20, 2023, e-mail from Christopher Morris to Nicolas Juzda, subject: "Notice of Fact Finding Meeting".

(l) Letter dated July 20, 2023, from Christopher Morris to Nicolas Juzda, subject: "NOTICE OF FACT-FINDING MEETING".

(m) July 20, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "RE Letter - Refusal to Return to EC Workplaces".

(n) July 24, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "RE Fact Finding Interview".

(o) Natural Resources Canada document: "Managing Workplace Concerns and Refusal to Work During COVID-19".

(p) July 24, 2023, e-mail from Roland Desjardins to Nicolas Juzda and others, subject: "RE Fact Finding Interview".

(q) July 27, 2023, e-mail from Christopher Morris to Nicolas Juzda, subject: "Disciplinary Measure - Written Reprimand".

(r) Letter dated July 27, 2023, from Christopher Morris to Nicolas Juzda, subject: "Disciplinary Measure - Written Reprimand".

(s) July 28, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "RE Disciplinary Measure Written Reprimand".

(t) July 31, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "Confirming my understanding of Friday meeting between EC and union".

(u) July 31, 2023, e-mail from Christopher Morris to Nicolas Juzda and others, subject: "RE Confirming my understanding of Friday meeting between EC and union".

(v) July 31, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "RE Confirming my understanding of Friday meeting between EC and union".

(w) August 15, 2023, e-mail from Christopher Morris to Nicolas Juzda, subject: "Workplace Investigation Report".

(x) "Workplace Investigation Reports on Refusal to Work", signed by Christopher Morris on August 15, 2023.

(y) Annex A to "Workplace Investigation Reports on Refusal to Work".

(z) August 16, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "Summary of meeting yesterday re s. 128(7.1) report and related".

(aa) August 19, 2023, e-mail from Nicolas Juzda to Christopher Morris and others, subject: "Refusal of work that constitutes a danger".

(bb) "Characterizing long COVID in an international cohort: 7 months of symptoms and their impact" by Davis et al in eClinicalMedicine, Volume 38, 2021, 101019, ISSN 2589-5370.

(cc) "The immunology of long COVID" by Altmann et al in Nature Reviews Immunology (2023).

(dd) "Post-acute and long-COVID-19 symptoms in patients with mild diseases: a systematic review" by Kessel et al in Family Practice, Volume 39, Issue 1, February 2022, Pages 159–167.

(ee) "Long COVID and Post-infective Fatigue Syndrome: A Review" by Sandler et al in Open Forum Infectious Diseases 2021 Sep 9;8(10).

(ff) "Acute and Long-Term Consequences of COVID-19 on Arterial Stiffness-A Narrative Review" by Zota et al in Life (Basel), 2022 May 25;12(6):781.

(gg) "Excess risk for acute myocardial infarction mortality during the COVID-19 pandemic" by Yeo YH et al in Journal of Medical Virology 2023 Jan; 95(1): e28187.

(hh) "PD-1 blockade counteracts post-COVID-19 immune abnormalities and stimulates the anti-SARS-CoV-2 immune response" by Loretelli et al in JCI Insight, 2021 Dec 22;6(24):e146701.

(ii) "Sustained cellular immune dysregulation in individuals recovering from SARS-CoV-2 infection" by Files et al in Journal of Clinical Investigation 2021 Jan 4;131(1):e140491.

(jj) "The effects of COVID-19 on cognitive performance in a community-based cohort: a COVID symptom study biobank prospective cohort study" by Cheetham et al in the Lancet eClinicalMedicine, July 21, 2023.

(kk) "SARS-CoV-2 infection and viral fusogens cause neuronal and glial fusion that compromises neuronal activity" by Martínez-Mármol et al in Science

Advances (2023).

(ll) "Neurotoxic amyloidogenic peptides in the proteome of SARS-COV2: potential implications for neurological symptoms in COVID-19" by Charnley et al in Nature Communications 13, 3387 (2022).

(mm) "Blood-brain barrier penetration of non-replicating SARS-CoV-2 and S1 variants of concern induce neuroinflammation which is accentuated in a mouse model of Alzheimer's disease" by Erickson et al in Brain, Behavior, and Immunity, Volume 109, 2023, Pages 251-268.

(nn) "SARS-CoV-2 promotes microglial synapse elimination in human brain organoids" by Samudyata et al. in Molecular Psychiatry 27, 3939–3950 (2022).

(oo) "Airborne transmission of SARS-CoV-2" by Prather et al in Science 370,303-304(2020).

(pp) "Transmission of SARS-CoV-2 by inhalation of respiratory aerosol in the Skagit Valley Chorale superspreading event" by Miller et al in Indoor Air, 10.1111/ina.12751 (2020).

(qq) "Reducing transmission of SARS-CoV-2" by Prather et al in Science 368, 1422 (2020).

(rr) "Coronavirus Disease 2019 Patients in Earlier Stages Exhaled Millions of Severe Acute Respiratory Syndrome Coronavirus 2 Per Hour" by Ma et al in Clinical Infectious Diseases, 10.1093/cid/ciaa1283 (2020).

(ss) "How did we get here: what are droplets and aerosols and how far do they go? A historical perspective on the transmission of respiratory infectious diseases" by Randall et al in Interface Focus, 2021 Oct 12;11(6):20210049.

(tt) "What were the historical reasons for the resistance to recognizing airborne transmission during the COVID-19 pandemic?" by Jimenez et al in Indoor Air, 2022 Aug;32(8):e13070.

(uu) "Identifying airborne transmission as the dominant route for the spread of COVID-19" by Zheng et al in Proceedings of the National Academy of Sciences, Vol. 117, No. 26, June 30, 2020.

(vv) "The immunology of asymptomatic SARS-CoV-2 infection: what are the key questions?" by Boyton et al in Nature Review Immunology 21, 762–768 (2021).

(ww) "SARS-CoV-2 Transmission From People Without COVID-19 Symptoms" by Johansson et al in JAMA Network Open, 2021; 4(1).

(xx) "The duration of infectiousness of individuals infected with SARS-CoV-2" by Walsh et al in Journal of Infection, 2020 Dec;81(6):847-856.

(yy) "Persistence of clinically relevant levels of SARS-CoV2 envelope gene subgenomic RNAs in non-immunocompromised individuals" by Davies et al in International Journal of Infectious Diseases, Volume 116, p418-425,

March 2022.

(zz) "Public Service Occupational Health Program preventive practices for responding to COVID-19 in the workplace" webpage, archived, original no longer online.

(aaa) "Lifting Universal Masking in Schools — Covid-19 Incidence among Students and Staff" by Cowger et al in New England Journal of Medicine 2022; 387:1935-1946.

(bbb) September 7, 2023, e-mail from Nicolas Juzda to Sylvie Jacmain, subject: "Yesterday's discussion".

(ccc) September 13, 2023, e-mail from Sylvie Jacmain to Nicolas Juzda, subject: "RE Yesterday's discussion".

(ddd) September 13, 2023, e-mail from Nicolas Juzda to Sylvie Jacmain, subject: "RE Yesterday's discussion".

(eee) September 15, 2023, e-mail from Nicolas Juzda to Elections Canada Duty to Accomodate team and others, subject: "Duty to Accommodate request".

(fff) Complaint Under Section 133 of the Canada Labour Code, signed by Nicolas Juzda on September 20, 2023.

(ggg) September 26, 2023, e-mail from Elections Canada Duty to Accommodate team to Nicolas Juzda, subject: "RE Duty to Accommodate request".

(hhh) Functional Abilities Form: PERSONAL MEDICAL CONDITION.

(iii) September 26, 2023, e-mail from Nicolas Juzda to Elections Canada Duty to Accommodate team, subject: "RE Duty to Accommodate Request".

(jjj) October 18, 2023, e-mail from Christopher Morris to Nicolas Juzda, subject: "Work Refusal - Second Investigation - Decision Rendered"

(kkk) "Workplace Investigation Reports on Refusal to Work", signed by various people on various dates

(lll) Annex B to "Workplace Investigation Reports on Refusal to Work".

(mmm) October 20, 2023, e-mail from Joe Falbo to Nicolas Juzda and others, subject: "Work Refusal case".

(nnn) October 23, 2023, first e-mail from Nicolas Juzda to Joe Falbo and others, subject: "RE Work Refusal case".

(ooo) October 23, 2023, second e-mail from Nicolas Juzda to Joe Falbo and others, subject: "RE Work Refusal case".

(ppp) October 23, 2023, e-mail from Joe Falbo to Nicolas Juzda and others, subject: "RE Work Refusal case".

(qqq) November 3, 2023, e-mail from Joe Falbo to Nicolas Juzda and others, subject: "Refus de travail - Nicolas Juzda".

(rrr) Letter dated November 1, 2023, from Marie-France Sanschagrin to Nicolas Juzda, subject: "Notice of Decision to Not Investigate Refusal to Work pursuant to Subsection 129(1) of the Canada Labour Code, Part II".

(sss) "How businesses and employees can stay safe while operating during COVID-19" webpage, Public Health Agency of Canada, Government of Canada website.

(ttt) "Reducing COVID-19 risk in community settings: A tool for operators" webpage, Public Health Agency of Canada, Government of Canada website.

3. Affidavit of Matthew McKenna.

4. Affidavit of Asia Dewar.

5. Recordings of meetings between Nicolas Juzda, Christopher Morris, and Sylvie Jacmain on June 29, 2023, and between Nicolas Juzda, Christopher Morris, Roland Desjardins, and Matthew McKenna on July 25, 2023.

6. Materials provided by the Head in response to the request below.

7. Such further and other affidavits and evidence as the Applicant may advise and this Honourable Court may permit.

The Applicant requests the Head of Compliance and Enforcement, Labour Program - Employment and Social Development Canada to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Head of Compliance and Enforcement, Labour Program - Employment and Social Development Canada to the Applicant and to the Registry:

1. All materials that were before the Head when it made the Decision, and all materials otherwise pertaining to the Decision, including but not limited to the following.

2. All correspondence, including e-mail, including any attachments, sent to or received from Elections Canada and/or its employees and representatives, about this matter, including any correspondence preceding the referral of this matter to the Head.

3. All correspondence, including e-mail, including any attachments, sent to or received from any other party (aside from the Applicant and Elections Canada) about this matter, including any correspondence preceding the referral of this matter to the Head.

4. All meeting notes taken of meetings, including virtual meetings, about this matter, including of internal meetings and of meetings with the Applicant, with Elections Canada and/or its employees and representatives, or with any other party.

5. Any recordings that exist of meetings, including virtual meetings, about this matter, including of internal meetings and/or of meetings with the Applicant, with Elections Canada and/or its employees and representatives, and/or with any other party.

6. The specific documents containing COVID-19 safety guidelines of Public Services and Procurement Canada, the Treasury Board Secretariat, and/or the Public Health Agency of Canada, which were reviewed by the Head and/or their delegate and/or their agents when deciding this matter, if any such documents were reviewed, including if applicable documents previously prepared by the Head (and/or their agents or other employees) or by third parties that reproduced or paraphrased those guidelines.

7. The specific documents containing COVID-19 safety guidelines of Health Canada or any provincial health agency, which were reviewed by the Head and/or their delegate and/or their agents when deciding this matter, if any such documents were reviewed, including if applicable documents previously prepared by the Head (and/or their agents or other employees) or by third parties that reproduced or paraphrased those guidelines.

8. Any other evidence provided by Elections Canada in this matter, not included in the above.

9. Any decisions of the Federal Court, Federal Court of Appeal, or any Labour Boards, which were reviewed by the Head, their delegate, and/or their agents, in deciding this matter.

10. Any previous decisions of the Head which were reviewed by the Head, their delegate, and/or their agents, in deciding this matter.

11. Any other evidence or information, not included in the above, which was reviewed by the Head, their delegate, and/or their agents, in deciding this matter.

12. All internal correspondence of the Head, their delegate, agents, and/or other employees, about this matter, including any correspondence preceding the referral of this matter to the Head.

13. Any notes on this case recorded by the Head, their delegate, agents, and/or other employees.

14. Any briefing notes, memos, reports, or similar documents prepared by the Head, their delegate, agents, and/or other employees about this matter, including any existing earlier drafts.

15. Any existing earlier drafts of the Decision.

16. Any policies, procedures, directions, instructions, announcements, memos, or other documents prepared by the Head (and/or their delegates, agents, other employees, etc.) to guide responses to refusals of work that constitute a danger due to dangers posed by COVID-19, including any such documents currently in effect and/or any such documents that were previously in effect at any time since January 1, 2019, but have been superseded or withdrawn.

17. Any policies, procedures, directions, instructions, announcements, memos, or other documents prepared by the Head (and/or their delegates, agents, other employees, etc.) to guide responses to refusals of work that constitutes a danger, in general and/or for dangers not specifically including COVID-19, including any such documents currently in effect and/or any such documents that were

previously in effect at any time since January 1, 2019, but have been superseded or withdrawn.

Date: 30/11/23

Nicolas Juzda
197-C rue Eddy
Gatineau, Quebec
J8X 2X2

Tel: 647-215-5187
Fax: N/A
E-mail: nicolas.juzda@alum.utoronto.ca

SOR/2021-151, s. 22

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date 30-NOV-2023
Date de dépôt

30-NOV-2023
Dated
Fait le

**RACHEL VILLENEUVE**
**REGISTRY OFFICER**
**AGENT DU GREFFE**