Federal Court Cour fédérale

Date: 20251003

Docket: T-2490-22

Ottawa, Ontario, October 3, 2025

PRESENT: The Honourable Madam Justice Aylen

PROPOSED CLASS PROCEEDING

BETWEEN:

RICHARD MICHAEL PERRON, VAN SUU TRANG and THE ESTATE OF NATALE BOZZO

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

[1] The Plaintiffs in this proposed class proceeding have brought a motion, pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106, appealing the Judgment and Reasons of Associate Judge Horne issued February 24, 2025 [Order]. In his Order, the Associate Judge struck the Plaintiffs' Fresh as Amended Statement of Claim [Claim], without leave to amend, on two bases: (i) the Claim failed to disclose a reasonable cause of action; and (ii) the Claim is not justiciable.

[2] The underlying proceeding is a proposed class action with three representative plaintiffs: (i) the Estate of Natalie Bozzo, who died from complications arising from COVID-19; (ii) Van Suu Trang, who was hospitalized and ventilated due to COVID-19; and (iii) Richard Michael Perron, who was hospitalized due to COVID-19. They seek to present a class consisting of all residents of Canada infected with COVID-19 from January 27, 2020, to November 17, 2021, whom (i) died as a result of infection with COVID-19; (ii) were hospitalized and ventilated in Canada and were released, with or without lingering symptoms; or (iii) were hospitalized without ventilation but were treated with oxygen and were released, with continuing treatment at home for more than 30 days, with or without lingering symptoms. The proposed class also seeks to exclude certain residents of Canada.

[3] The Claim takes aim at certain actions taken and not taken by the Defendant in response to the COVID-19 pandemic, which the Plaintiffs refer to as the "Impugned Conduct". The "Impugned Conduct" is defined in the Claim as including the following:

A. The Defendant did not follow its own "Pandemic Plan" (which is defined in the Claim as the Canadian Pandemic Influenza Plan for the Health Sector 2006, adopted after the SARS-1 outbreak, which was to be updated and revised regularly) and its subsequent recommendations, including timely monitoring.

B. The Defendant failed to maintain and diminished Canada's supply of personal protective equipment by selling it to China, resulting in a greater shortage of protective equipment for Canadians.

C. The Defendant's advice with respect to masking (particularly non-medical masking) ignored scientific facts.

D. The Defendant's measures to close Canadian borders were inconsistent across land and air entry points and failed to prevent the continued entry of COVID-19 into Canada.

E. The Defendant did not transition to mandatory submission of contact tracing and quarantine plans for all travelers entering Canada until November 17, 2020, notwithstanding that on February 24, 2020, the World Health Organization-China Joint Mission on COVID-19 stressed that "to reduce COVID-19 illness and death, near-term readiness planning must embrace the large-scale implementation of high quality, non-pharmaceutical public health measures," which measures "must fully incorporate immediate case detection and isolation, rigorous close contact tracing and monitoring/quarantine, and direct population/community engagement."

F. The Defendant was not aware that, during the period between May 5, 2020, to June 30, 2020, only 66% of incoming travelers to Canada who were required to quarantine were in fact doing so and that contact information for 20% of incoming travelers was missing or incomplete.

G. The Global Public Health Intelligence Network [GPHIN] operated by the Defendant and used to identify, assess, prevent and mitigate threats to human health, was not connected to its essential function of risk assessment and therefore

failed to enable the Defendant to correctly evaluate the level of risk to Canadians of COVID-19 infection and its consequences.

H. The Defendant did not order vaccines from a recognized pharmaceutical leader as early as possible and did not establish a vaccine procurement task force or procurement advisory group.

[4] The Claim advances one cause of action — namely, a breach of the Plaintiffs' right to security of the person as protected by section 7 of the Canadian *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c 11 (UK) [*Charter*]. The Plaintiffs plead that the Defendant has an overarching positive duty to protect, promote and restore the physical and mental well-being of Canadians pursuant to the *Canada Health Act*, RSC, 1985, c C-6, the *Department of Health Act*, SC 1996, c 8, the *Public Health Agency of Canada Act*, SC 2006, c 5, and the *Quarantine Act*, SC 2005, c 20. The Plaintiffs assert that once the Defendant decided to take steps in furtherance of these statutory duties and engage in the "Impugned Conduct", the Defendant's conduct triggered the application of section 7 of the *Charter*.

[5] The Plaintiffs plead that the "Impugned Conduct" increased risk and caused the Plaintiffs to be stricken with COVID-19. The Plaintiffs plead that the deprivation of their right to security of the person was not in accordance with the principles of fundamental justice as it was arbitrary, overly broad and disproportionate, and that the failures of the Defendant cannot be demonstrably justified under section 1 of the *Charter*. By way of remedies, the Plaintiffs seek: (a) various declarations of breach of statutory duties and section 7 of the *Charter*; (b) damages of $1.00 per

Class Member; (c) damages of $50 million as “vindication” for all Class Members; and (d) damages of $50 million as “deterrence” for all Class Members.

[6] In his Order, the Associate Judge found that the Claim should be struck, pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, on the basis that it disclosed no reasonable cause of action. He determined that none of the legislation relied upon by the Plaintiffs creates a duty between the government and members of the public, with the exception of the *Department of Health Act*, which the Supreme Court of Canada has previously found establishes general duties to the public. However, the Associate Judge concluded that it was plain and obvious that a *Charter* remedy is not available for a breach of section 4 of the *Department of Health Act*.

[7] The Associate Judge then went on to find that, even if the statutory duties were stripped out of the Claim and the focus was only on the “Impugned Conduct”, the section 7 claim was doomed to fail as the Plaintiffs cannot establish that the deprivation is contrary to the principles of fundamental justice. The Associate Judge found that any allegation that the conduct of the Defendant was arbitrary, overly broad or grossly disproportionate was completely foreclosed by the existing jurisprudence. He went on to find that the defects in the Claim could not be remedied with better drafting.

[8] In addition to striking the Claim on the basis that it disclosed no reasonable cause of action, the Associate Judge also found that the Claim should be struck on the basis that it was not justiciable. He found that there was no judicially manageable standard for assessing whether the federal COVID-19 strategy struck the right balance between medical, economic and social

priorities. The Associate Judge stated that, unlike in other cases, the Claim did not challenge a discrete part of the pandemic response but rather multiple actions and policy choices spanning decades. He found that the Court "does not have the institutional capacity to decide whether swaths of Canada's overall pandemic response strategy was the best strategy, nor is it a legitimate matter for the Court to decide."

[9] For the Plaintiffs to succeed on this appeal, the Plaintiffs must establish that the Associate Judge erred in determining that it was plain and obvious that the Claim should be struck on the grounds that it: (a) discloses no reasonable cause of action under the engagement prong of the section 7 analysis; (b) discloses no reasonable cause of action under the principles of fundamental justice prong of the section 7 analysis; and (c) has no reasonable prospect of success as is it is not justiciable. A failure to establish any of one of these errors, on the standard of review applicable to that error, is fatal to this appeal.

[10] While the Plaintiffs have asserted that the Associate Judge made several errors relevant to each of the determinations above, they focused the majority of their submissions on the issue of whether it was plain and obvious that there was no reasonable cause of action under the engagement prong of the section 7 analysis. This was certainly a divisive issue between the parties and largely turned on their respective characterizations of the Plaintiffs' Claim. However, I need not make a determination on that issue, as I am satisfied that this appeal turns on the Plaintiffs' failure to establish any basis for this Court to interfere with the Associate Judge's ultimate conclusion — that the Claim should be struck as it is plain and obvious that it discloses no reasonable cause of action under the principles of fundamental justice prong of the section 7

analysis as it relates to the Plaintiffs' arbitrariness allegation. While the Plaintiffs also plead that the deprivation in question was overly broad and grossly disproportionate, for the reasons detailed below, I find that the Plaintiffs did not appeal the Associate Judge's finding in regard to the sufficiency of the pleading vis-à-vis these additional principles of fundamental justice.

I. Analysis

A. General Principles - Motions to Strike

[11] The threshold for striking out a pleading is high. A pleading will only be struck out pursuant to Rule 221(1)(a) where the moving party has established that it is "plain and obvious" that the pleading discloses no reasonable cause of action or has no reasonable prospect of success. In making that assessment, the material facts pleaded must be taken as true, unless the allegations are based on assumption and speculation. If a pleading contains bare assertions without material facts upon which to base those assertions, then it discloses no cause of action and is liable to be struck. However, if there is any doubt as to whether a cause of action can succeed, the matter should be allowed to proceed to trial [see *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at paras 7–8 and 27; *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, [2011] 3 SCR 45 at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at 980; *La Rose v Canada*, 2023 FCA 241 at para 19].

[12] Motions judges should not delve into the merits of a plaintiff's argument, but should, rather, consider whether the plaintiff should be precluded from advancing the argument at all [see *Salna v Voltage Pictures, LLC*, 2021 FCA 176 at para 77; *Brink v Canada*, 2024 FCA 43 at para 46]. On a motion to strike, the impugned pleading must be read generously and, recognizing

that the law is not static and evolves to address new and emerging situations, the Court must err on the side of permitting novel but arguable claims to proceed to trial [see *Imperial Tobacco Canada*, *supra* at para 21; *La Rose*, *supra* at para 19].

[13] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. In order to disclose a reasonable cause of action, a statement of claim must plead each constituent element of every cause of action with sufficient particularity and each allegation must be supported by material facts. Pleadings play an important role in providing notice and defining the issues to be tried, so as to inform the defendant "who, when, where, how and what gave rise to its liability." The Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action. Viewing the pleadings as a whole and considering all the circumstances, the Court must ensure that the issues are defined with sufficient precision to make the proceedings "manageable and fair" [see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16–17 and 19; *Al Omani v Canada*, 2017 FC 786 at para 14; *Simon v Canada*, 2011 FCA 6 at para 18; *Enercorp Sand Solutions Inc v Specialized Desanders Inc*, 2018 FCA 215 at paras 36–37].

[14] The Federal Court of Appeal recognized at paragraph 17 of *Mancuso*, *supra* that:

> The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy.

> Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[15] Rule 181 of the *Federal Courts Rules* further requires that a pleading contain particulars of every allegation made. Particulars of any alleged misrepresentation, fraud, breach of trust, the alleged state of mind of any person, malice or fraudulent intention must be expressly pleaded.

[16] An analysis of the sufficiency of the material facts pleaded in a Statement of Claim is contextual and fact driven. As stated by the Federal Court of Appeal in *Mancuso, supra* at paragraph 18:

> There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a continuum, and it is the responsibility of a motions judge, looking at the pleadings as a whole, to ensure that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.

B. Standard of Review

[17] The applicable standard of review on an appeal under Rule 51 of a discretionary order of an Associate Judge is set forth in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 28, 65 and 79. Such orders are to be reviewed on the civil appellate standard [see *Housen v Nikolaisen*, [2002] 2 SCR 235, 2002 SCC 33]. As such, questions of law and questions of legal principles are reviewable on a standard of correctness. Questions of fact and questions of mixed fact and law (which involve applying a legal standard to a set of facts) are subject to the palpable and overriding error standard. However, questions of mixed fact and law where there are extricable questions of law or legal principle are reviewable

on a standard of correctness [see *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 57].

[18] Decisions made on motions to strike are discretionary in nature [see *Feeney v Canada*, 2022 FCA 190 at para 4]. An exercise of discretion by an Associate Judge involves applying legal standards to the facts as found and thus amounts to a question of mixed fact and law [see *Mahjoub*, *supra* at para 72]. Absent an extricable question of law or legal principle, an Associate Judge's exercise of discretion can only be set aside on the basis of palpable and overriding error [see *Mahjoub*, *supra* at para 74].

[19] An extricable question of law or legal principle arises if this Court can discern some error in law or principle underlying the Associate Judge's exercise of discretion. In that case, this Court can reverse the exercise of discretion on account of that error. Put differently, this Court must consider whether the Associate Judge's discretion was "infected or tainted" by some misunderstanding of the law or legal principle [see *Mahjoub*, *supra* at para 74; *Housen*, *supra* at para 35].

[20] The standard of palpable and overriding error is high and difficult to meet and was described by the Federal Court of Appeal in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at paragraph 46 in these terms:

> […] "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

[21] Examples of palpable errors include obvious illogic in reasons (such as factual findings that cannot sit together), findings made without any admissible evidence or evidence received in accordance with the doctrine of judicial notice, findings based on improper inferences or logical errors and the failure to make findings due to a complete or near-complete disregard of evidence [see *Mahjoub*, *supra* at para 62].

[22] In considering this appeal, I am also mindful that the Associate Judge, as one of the Case Management Judges in this proceeding, was very familiar with the particular circumstances and issues of the case and that, as a result, any intervention on appeal should not come lightly. This does not mean, however, that errors, factual or legal, should go undetected [see *Hospira Healthcare*, *supra* at para 10].

[23] The standard of review applicable to the specific errors alleged by the Plaintiffs will be addressed below.

C. Section 7 of the *Charter*

[24] Section 7 of the *Charter* provides:

Life, liberty and security of person	**Vie, liberté et sécurité**
7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	**7** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[25] To establish that a law or a government action violates section 7 of the *Charter*, a claimant must establish two elements. First, the claimant must show that the impugned law or government action deprives them of the right to life, liberty or security of the person. In other words, the claimant's life, liberty or security of the person interest must be "engaged". Second, once the claimant has established that section 7 is engaged, the claimant must show that the deprivation in question is not in accordance with the principles of fundamental justice [see *R v CP*, 2021 SCC 19, [2021] 1 SCR 679 at para 125, citing *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 at para 55].

[26] As the Supreme Court has stated, "[s]ection 7 does not promise that the state will never interfere with a person's life, liberty or security of the person — laws do this all the time — but rather that the state will not do so in a way that violates the principles of fundamental justice" [see *Carter*, *supra* at para 71].

[27] Arbitrariness as a principle of fundamental justice targets the situation where there is no rational connection between the object or purpose of the law or government practice and the limit it imposes on a claimant's life, liberty or security of the person [see *Carter*, *supra* at para 83; *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 at para 111].

[28] The fact that a government practice is in some way unsound or that it fails to further the government objective as effectively as a different course of action would is not sufficient to establish that the government practice is arbitrary [see *Ewert v Canada*, 2018 SCC 30, [2018] 2 SCR 165 at para 73]. What is relevant is the objective of the government practice, not its actual

effectiveness [see *Bedford*, *supra* at para 111; *Spencer v Canada (Health)*, 2021 FC 621 at para 117]. As a result, courts have recognized that the standard of arbitrariness is not one that is easily met [see *Bedford*, *supra* at para 119].

D. The Claim was properly struck based on the insufficiency of the arbitrariness pleading

[29] In their written representations, the Plaintiffs assert that the Associate Judge made the following errors in relation to his consideration of arbitrariness under the principles of fundamental justice prong of the section 7 analysis:

A. The Associate Judge erred in law and exceeded his role on a motion to strike by speculating as to what evidence could demonstrate that the "Impugned Conduct" was not arbitrary. The Plaintiffs assert that he then erred by concluding that it is "self-evident that there is a link between the actions that are collectively described as the Impugned Conduct and the objective of the pandemic response."

B. In finding that the Claim cannot meet the test of arbitrariness and therefore must be struck, the Plaintiffs assert that the Associate Judge improperly adopted a floodgates argument. The Plaintiffs assert that there is no authority to support such an argument, but more importantly, by finding that the Claim represents a "quantum shift," the Associate Judge failed to consider or even refer to *Mathur v Ontario*, 2024 ONCA 762, which the Plaintiffs assert supports the Claim completely.

[30] Before considering the Plaintiffs' asserted errors, I must make a determination regarding the standard of review. As detailed above, absent an extricable question of law or legal principle, a decision made by an Associate Judge on a motion to strike involves applying the legal principles applicable on a Rule 221(1)(a) motion to the pleading that is before the Court, which attracts a palpable and overriding error standard.

[31] In this case, I agree with the Plaintiffs that the Associate Judge's determination on this issue is reviewable on a standard of correctness, as I find that the Associate Judge adopted an incorrect approach to his analysis. His analysis focused on the merits of the arbitrariness argument and whether the Plaintiffs could "establish" at trial that the deprivation was arbitrary, rather than focusing on the sufficiency of the pleading itself. As such, I find that there is merit to the Plaintiffs' first asserted error. However, I find that the Associate Judge was ultimately correct in his finding that the arbitrariness allegation, as pleaded, cannot withstand a motion to strike.

[32] A determination of whether the pleading must be struck for disclosing no reasonable cause of action requires the Court to focus on the pleading itself. The Plaintiffs' arbitrariness allegation is pleaded at paragraphs 198–199 of the Claim, which provides:

> 198. There is no connection between the Impugned Conduct which resulted in the breach of section 7 of the *Charter* and the effect on the Class Members of death or a Serious Outcome. The Impugned Conduct contradicted the very objective of the *CHA*, the *PHACA*, the *DHA* and the *QA*, all as pleaded herein. The Impugned Conduct was arbitrary in that it had the effect of failing to ensure that the stated purpose of those statutes, which include protecting the physical and mental well-being of Canadians and preventing the introduction and spread of communicable diseases, were achieved.
>
> 199. Rather than further these statutory objectives, the Impugned Conduct frustrated and prevented their fulfillment, as they had a

> detrimental effect on the physical and mental well-being of the Class Members and led to the introduction and spread of COVID-19, being a communicable disease.
>
> [Emphasis added.]

[33] In *Robertson v Ontario*, 2024 ONCA 86 (leave to appeal refused, 2024 SCCA No 122), the Ontario Court of Appeal heard an appeal from a motion judge's decision to strike a proposed class action against the Ontario provincial government arising from its response to the risks posed by COVID-19 to long-term care home residents in Ontario. The motion judge struck the claims, which included a section 7 claim, on the basis that they were certain to fail. On the issue of the sufficiency of the pleading vis-à-vis the allegation of arbitrariness, the Ontario Court of Appeal stated:

> [76] […] It is true that the appellants' statement of claim in this case pleads that the respondent's response to COVID-19 in LTC homes was "arbitrary", and an arbitrary law may violate principles of fundamental justice. However, "arbitrariness" in the context of s.7 has a narrow and specific meaning, namely, that the impugned measure bears no relation to the objective that lies behind the enactment: *Abarquez v. Ontario*, 2009 ONCA 374, 95 O.R. (3d) 414, at para. 49.
>
> [77] To properly plead arbitrariness sufficiently to ground a s.7 claim, the appellants would have to have pled that the impugned measures bore no relationship with the goal of suppressing COVID-19. But as noted above, their core allegation is that the measures implemented in LTC homes did not go far enough or should have been adopted earlier. There is no allegation that the measures adopted were wholly unrelated to the goal of suppressing COVID-19.
>
> [Emphasis added.]

[34] In this case, the core allegation being made by the Plaintiffs is that the "Impugned Conduct" failed to ensure that the objectives of the statutes were achieved — namely, protecting the physical and mental well-being of Canadians and preventing the introduction and spread of

communicable diseases. While the Plaintiffs did not address each element of the "Impugned Conduct" separately for the purpose of their arbitrariness allegation, I find that, on a review of the pleading as a whole, there is no allegation that the "Impugned Conduct" was wholly unrelated to the objective of protecting the well-being of Canadians and preventing the introduction and spread of COVID-19. Potentially being ineffective (as pleaded by the Plaintiffs) is, of course, different than being wholly unrelated. Moreover, contrary to the Plaintiffs' assertion at the hearing, I find that the bald allegation at paragraph 198 of the Claim, that there is "no connection" between the objectives behind the "Impugned Conduct" and the Plaintiffs' deprivations, is not sufficient to save the pleading.

[35] With respect to the floodgates error asserted by the Plaintiffs, this error is grounded in what the Plaintiffs view as the Associate Judge's mischaracterization of the Claim — a mischaracterization they assert permeated his entire analysis, including his arbitrariness analysis. The Plaintiffs assert that this error is similar to that made in *Mathur*, *supra*, where the Ontario Court of Appeal noted that the motions judge's arbitrariness and gross disproportionality analysis was tainted as it was considered through the wrong "lens" (i.e., the wrong characterization of the pleading).

[36] For the purpose of this appeal, I need not make a finding on whether the Associate Judge erred in the characterization of the pleading and my reasons should not be construed as an endorsement of his analysis or conclusion with respect to that issue. However, viewing the Claim through the lens that, once the Defendants undertook to act in accordance with their statutory obligations their conduct triggered the application of section 7 (as I have done for the purpose of

this appeal), my analysis and ultimate conclusion that the arbitrariness allegation has not been sufficiently pleaded remains entirely unchanged.

[37] I would also note that the Associate Judge's comments regarding "floodgates" did not form part of his arbitrariness analysis. Rather, they were his final comments after considering all aspects of the Plaintiffs' section 7 claim. When read fairly, these comments were directed to the issue of whether section 7 was engaged and not to the second prong of the section 7 analysis, which the Plaintiffs' acknowledged at the hearing of the appeal.

[38] Accordingly, I find that the Associate Judge was correct in striking the pleading, as the allegation of arbitrariness was not sufficiently pleaded.

E. There is no basis for the Court to consider the Associate Judge's findings regarding overbreadth and gross disproportionality

[39] At the hearing of the appeal, the Plaintiffs asserted that they were, in fact, appealing the Associate Judge's finding that their allegation that the deprivation in question was overly broad and grossly disproportionate was doomed to fail. When I asked the Plaintiffs to identify where this ground of appeal was raised, the Plaintiffs asserted that they were not required to articulate every ground of appeal by virtue of the fact that they had made the general assertion in their notice of motion that the Associate Judge erred in finding that: (a) the Claim was doomed to fail (paragraph 1(a)); and (b) the Claim should be struck for failing to establish the deprivation was contrary to the principles of fundamental justice (paragraph 1(e)).

[40] The onus is on the Plaintiffs to identify a specific error made by the Associate Judge in the Order that would require this Court to intervene. An alleged error that is not particularized with sufficient detail to allow the Court to determine whether an error was made is not sufficient to discharge that onus on an appeal [see *Eisbrenner v Canada*, 2020 FCA 93 at para 63; *Carreau v Canada (Attorney General)*, 2025 FC 1318 at para 104].

[41] Here, the Plaintiffs' notice of motion does not identify a specific error made by the Associate Judge in relation to either his overbreadth or grossly disproportionate findings. Moreover, the Plaintiffs' written representations in support of the motion are similarly silent regarding any asserted error related to these findings. While the Plaintiffs rely on general allegations of error in the notice of motion, such bald allegations do not satisfy the requirement to particularize an actual asserted error. In the circumstances, I am not satisfied that there is any basis for the Court to consider, on this appeal, the Associate Judge's findings in relation to overbreadth and gross disproportionality.

F. Leave to Amend the Claim

[42] At the hearing of the appeal, the Plaintiffs confirmed that they were not asserting that the Associate Judge erred in refusing to grant them leave to amend their Claim. As such, the issue of whether the Associate Judge should have granted the Plaintiffs leave to amend their Claim is not before me on this appeal.

II. Costs

[43] As this proceeding is a proposed class action, pursuant to Rule 334.39(1) of the *Federal Courts Rules*, no costs may be awarded against any party, even on motions prior to a motion for certification, unless certain circumstances exist as detailed therein. The parties agree that no such circumstances exist here and accordingly, no cost award should be made. I concur.

ORDER in T-2490-22

THIS COURT ORDERS that:

1. The motion is dismissed.

2. There is no order as to costs.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2490-22
STYLE OF CAUSE:	RICHARD MICHAEL PERRON, VAN SUU TRANG AND THE ESTATE OF NATALE BOZZO v HIS MAJESTY THE KING
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 18, 2025
ORDER AND REASONS:	AYLEN J.
DATED:	OCTOBER 3, 2025

APPEARANCES:

Melvyn L. Solmon Nancy J. Tourgis Joanne Iskander-Salmoon	FOR THE PLAINTIFFS
Victor Paolone James Stuckey	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Solman Rothbart Tourgis Slodovnick LLP Barrisers and Solicitors Toronto, Ontaro	FOR THE PLAINTIFFS
Symon Zucker Professional Corporation Barristers and Solicitors Toronto, Ontario	
Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT