

FEDERAL COURT OF APPEAL

**BETWEEN:**

NABIL BEN NAOUM, THE HONORABLE MAXIME BERNIER,  
THE HONORABLE A. BRIAN PECKFORD, SHAUN RICKARD  
AND KARL HARRISSON

Appellant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

\* \* \* \* \*

**HEARING HELD AT**

Ottawa, Ontario

Wednesday, October 11, 2023

\* \* \* \* \*

**CORAM:**

L'honorable juge George R. Locke  
L'honorable juge René LeBlanc J.A.  
L'honorable juge Nathalie Goyette J.A.

**APPEARANCES:**

Mr Nabil Ben Naoum for the appellant  
Mrs Allison Kindle Pejovic  
Mr. Chris Fleury  
Mr. Sam A. Presvelos  
Mr. Evan Presvelos

Mr. Sandy Graham for the respondent  
Mr. Robert Drummond  
Mrs Virginie Harvey

Mrs Alison Greenspoon Clerk

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Ottawa, Ontario

--- The hearing starts on Wednesday 11 October 2023

--- REPRESENTATION BY MR NABIL BEN NAOUM :

Mr NABIL BEN NAOUM: Well, first of all, I have to say that since the case is consolidated, I agree with the arguments of my co-appellants on the theory of cause.

I am here to make my own points.

I've decided to frame it in terms of *Borowski's* second criterion, specifically the public interest in hearing the case, but not only that. I am going to make various points, and although I am also a lawyer, I am here... I am representing myself and I wanted to give you the layman's view.

I have an introduction that is a reminder of some of the elements of the vaccine mandate, and you'll soon have an idea of what my point is.

I would therefore like to begin by reminding you of an important fact, which was also mentioned by my colleague, Mrs Pejovic. The fact that from November 1st 2021 until June 22nd 2022, in other words for a period of more than eight months, a citizen who had not been vaccinated against COVID could not leave Canada. I repeat, during this period of almost a year, the only way for a citizen who had not been vaccinated against COVID to leave Canada was to take a rowboat and paddle across the ocean.

I must have said this a dozen times since

1 the trial began, but I'll say it again and again because it  
2 seems to me that no vaccinated Canadian can fully integrate  
3 and understand the issues at stake.

4 In 2022, this sub-class of citizens, the  
5 non-vaccinated, found themselves assimilated to Cubans  
6 under Fidel Castro's regime. These six million citizens, of  
7 which I am one, since I was forced to publicly declare my  
8 medical record that I thought was private, found themselves  
9 prisoners of their country. I repeat this because all too  
10 often I have encountered people who have not grasped the  
11 full implications of the debate.

12 Among them, Mrs Justice Gagné, who during  
13 the trial seemed to discover facts about this issue, such  
14 as the fact that Canadians were unable to take the plane to  
15 visit their dying family members because of the vaccination  
16 mandate, and that this did not constitute an emergency  
17 according to the brilliant decision-makers at Transport  
18 Canada.

19 It is these measures that the Attorney  
20 General has defended, which is why this case is a sensitive  
21 one for his members and why he wants to confirm the strike  
22 for mootness as soon as possible. To do this, he is  
23 counting on your resignation.

24 Let me therefore briefly outline some of the  
25 elements of the transport vaccination mandate in question  
26 which the Federal Court of First Instance did not consider  
27 to be in the public interest or to contain uncertainty in  
28 the law, and then I will explain why I believe that these

1 suspended vaccination orders are still relevant.

2           First of all, with the transport vaccination  
3 mandate, unvaccinated citizens could get on a plane to  
4 Canada, but they couldn't get on a plane leaving the  
5 country, supposedly for the safety of the passengers. So we  
6 have unvaccinated passengers who are dangerous on a plane  
7 leaving Canada, but not on a plane going to Canada... no,  
8 it's the other way around, who are dangerous on a plane  
9 leaving Canada, but not on a plane going to Canada. This is  
10 what I call the miracle of liberal science.

11           The truth is, we all know what the real  
12 reason is. It's because Canada couldn't refuse to take in  
13 its own citizens - that would make for a diplomatic mess  
14 and too much of a disgrace. They could only prevent them  
15 from leaving afterwards. And let me remind you that doctors  
16 and experts took their professional oaths to defend this  
17 heresy, paid for by the public purse.

18           What is even more appalling is that the  
19 vaccination mandate has managed to create a situation  
20 where, for the first time - and I would ask you to find me  
21 an example if there is one - the status of Canadian  
22 citizenship itself has become a criterion of  
23 discrimination, before being unvaccinated. By a madness  
24 that only a government decision-maker could have invented,  
25 it was decided that if you were an unvaccinated foreigner,  
26 you could fly within and leave Canada without any problem,  
27 but if you happened to be a Canadian citizen, you could  
28 not. This demonstrates that there was nothing sanitary or

1 scientific about these measures.

2 I am amazed at the level of intellectual  
3 dishonesty required to defend this policy. It's absolutely  
4 lunar in the sense that Canadian citizenship is supposed to  
5 confer rights and privileges, not prohibitions. It wasn't  
6 just people who had priority over an unvaccinated citizen,  
7 but animals too.

8 I'd like to share a personal story that may  
9 illustrate the reality of being an unvaccinated Canadian  
10 citizen in 2022. Shortly after I filed my application for  
11 judicial review, I was discussing with a colleague at the  
12 courthouse who explained that she was going to fly back to  
13 see her family in Europe and that she would be taking her  
14 Chihuahua with her. So I had this great moment of  
15 loneliness when I got home and I'd stare at my dog for a  
16 long time and I'd come to realise this. I realised that a  
17 dog has more freedom of movement than an unvaccinated  
18 citizen in the Canada defended by the Attorney General. And  
19 that's how seriously these people come and defend this  
20 policy to your face.

21 Another misconception is that there was no  
22 alternative, such as a negative COVID test. Our federal  
23 decision-makers decided that an unvaccinated person with a  
24 negative COVID test was more dangerous than a vaccinated  
25 person who had not been tested. This is another point I  
26 would like to emphasise, that there was no possible  
27 alternative for an unvaccinated citizen, and here I am of  
28 course referring to the *Oakes* test of minimal impairment,

1 which we have never been able to debate.

2                   So, I repeat, we couldn't test negative, we  
3 couldn't have a family emergency, everything was set up so  
4 that the only way to leave Canada was to be raped, because  
5 that's what it's all about. Submitting yourself to an act  
6 without consent is rape. Well, unlike a lot of people, I  
7 refused to be raped. I refused to be injected against my  
8 will just because I was told to.

9                   And I haven't invented anything. Free and  
10 informed consent to healthcare, freedom of movement,  
11 minimal infringement of rights-it doesn't seem to me that  
12 we have discovered the moon here. I have simply remained  
13 faithful to the principles of law that have shaped me and  
14 guided my practice and professional knowledge, while others  
15 have turned their backs on our civilisational achievements.  
16 All the regulatory mischief that I have enumerated, and  
17 that they have defended so vigorously, is what they hope  
18 will be forgotten forever by the dismissal of the appeal.

19                   Now that I've set the scene, I can imagine  
20 the questions this Court of Appeal is asking itself. Yes,  
21 it's completely stupid politics, but how is this litigation  
22 still relevant? What blatant errors were made in the  
23 judgement declaring it moot? Why should this appeal be  
24 taken up now that the health concerns seem to be behind us?

25

26                   Well, it's because, contrary to what has been said,  
27 this is not a health debate, it's not a pandemic management  
28 debate, it's a rule of law debate. It's not just a

1 violation of the rights and freedoms of Canadian citizens,  
2 it's a violation of human rights.

3                   Let me remind you of both the Canadian  
4 Charter of Rights and Freedoms and the *Universal*  
5 *Declaration of Human Rights* : "Everyone has the right to  
6 leave any country, including his or her own [...]".

7                   Well, the unique opportunity that this Court  
8 of Appeal has is to establish a principle that I believe is  
9 fundamental to our democracy, which is that the violation  
10 of a human right, even the appearance of a violation, is  
11 never "moot". It is never outdated or theoretical. It is  
12 permanent, it must be monitored, it is controlled by our  
13 institutions, it is debated, it is analysed. The *statement*  
14 that this Court of Appeal can make is this: the violation  
15 of a Canadian citizen's right or freedom never becomes  
16 theoretical when a right that has been taken away is  
17 subsequently restored. And that is the unwavering principle  
18 that I want to convey today, that is the message that I  
19 hope this Court of Appeal hears and receives, and it is on  
20 the basis of that principle that I submit to you that the  
21 Federal Court of First Instance has completely missed the  
22 point, and it is for that reason that I submit to you that  
23 you must intervene.

24                   And on this point, allow me to step back  
25 from the debate. I must admit to a certain disinterest when  
26 I see where the debate is heading in terms of applying the  
27 criteria for mootness like a recipe: what is the standard  
28 of review, the correct, reasonable decision, an error of



1 law, an error of fact, a mixed error, is it *Borowski's*  
2 first or second criterion? I submit to you that we are  
3 first and foremost at the heart of the statutory  
4 jurisdiction of the Federal Court of Appeal and its right  
5 to review first instance decisions.

6 I don't practice at the Federal Court, so to  
7 make up for my shortcomings, I've had to do a lot of  
8 research on the subject, and in the course of that research  
9 I came across a talk given in 2016 by your colleague, the  
10 Honourable Just Stratas, the presiding judge of this  
11 Federal Court of Appeal, and allow me to share with you a  
12 brief quote from him. He said in 2016 :

13 "We like to think that our  
14 Constitution and the Rights and  
15 Freedoms are permanent features of  
16 the way we live. That's because in  
17 today's world, they are obvious for  
18 most people. But the reality is that  
19 we live in four dimensions, and the  
20 fourth dimension is time. What we  
21 have today are our achievements, but  
22 time passes and circumstances change.  
23 Who could have imagined in 1930 that  
24 within a decade millions of Jews  
25 would be exterminated simply for  
26 being Jewish? Is that too extreme an  
27 example? In this case, in 1940, who  
28 would have thought that within ten

1 years, thousands of North Americans  
2 of Japanese descent would have had  
3 their property confiscated and been  
4 exiled? Is that too long ago for you?  
5 Or in 1960, who would have thought  
6 that hundreds of our fellow Quebecers  
7 would be sent to prison without  
8 charge, without trial, on nothing  
9 more than suspicion?  
10 Just because you think we're living  
11 in peaceful times doesn't mean it  
12 will last. What history teaches us is  
13 that it is bound to change."

14 The quote continues.

15 "Now, with that in mind, imagine the  
16 most extreme example that would  
17 befall us 30 years from now. Let's  
18 say 30 years from now there's an  
19 immediate national emergency,  
20 something very serious for our  
21 security, the government passes laws  
22 that many will say are necessary,  
23 arbitrary arrests, confiscation of  
24 property, suspension of privacy for a  
25 certain category of people, whatever  
26 you can imagine, think extreme, think  
27 radical. The issue of government  
28 control versus the rights and

1 freedoms of citizens will then come  
2 before a judge. Do you want that  
3 judge to decide the issue on the  
4 basis of constitutional principles  
5 that have been applied for decades,  
6 if not centuries, or do you want that  
7 judge to come to a conclusion based  
8 on his or her personal view of what  
9 would be appropriate in the  
10 circumstances? Which approach do you  
11 prefer? Which approach promotes  
12 public support, order, social  
13 cohesion? Which approach promotes  
14 public obedience, especially in a  
15 context of fear and anxiety?  
16 In my view, the answer is obvious. We  
17 need judges who take an approach that  
18 is faithful to the principles that  
19 have been rooted for decades, if not  
20 centuries. The second approach has  
21 murky effects where we see decisions  
22 being treated as political events  
23 where some see judges as servants of  
24 the politicians who put them in  
25 power."

26 That was the end of the quote, and it's an  
27 extract from Mr Justice Stratas's lecture in 2016.

28 So he probably wouldn't have wanted to be

1 such a visionary and prophet of doom, although he was very  
2 optimistic with his assumption of 30 years in the future,  
3 because here we are 8 years later before you.

4           Like Justice Stratas, I appreciate the  
5 dialectical approach of the doomsday scenario, so allow me  
6 to propose a completely imaginary scenario. Imagine a  
7 health problem caused by a disease very similar to the flu;  
8 imagine that there is a vaccine against this disease, but  
9 that even if we receive it four, five, six times, we can  
10 still contract or transmit it; imagine that this vaccine  
11 carries the risk of significant side effects; Imagine now  
12 that this vaccine will create two classes of citizens in  
13 Canadian society: the vaccinated and the non-vaccinated,  
14 that the federal government will order everyone to be  
15 vaccinated, or else the non-vaccinated will be excluded  
16 from life in society: they won't be able to go to the gym,  
17 they won't be able to go to restaurants with their spouse,  
18 they won't be able to go to shopping centres. That is not  
19 so bad, you might say. So let's go one step further.

20           What if unvaccinated people couldn't work?  
21 They wouldn't get unemployment insurance if they lost their  
22 jobs. Hell, they wouldn't get organ transplants, they'd be  
23 left to die like dogs. Let's imagine, still in this  
24 hypothetical scenario, that they decide to protest  
25 peacefully against these measures and demonstrate in the  
26 capital. Imagine that the government declares martial law  
27 to put an end to the demonstrations, which would be  
28 described as an occupation. That they would be told that

1 they are uneducated, that they don't know how to handle  
2 things, that they are disruptive. That we do not listen to  
3 them because they are not going through the proper legal  
4 ways. The Prime Minister would ask how such a fringe group  
5 can be tolerated. Imagine that the citizens who took part  
6 in the demonstrations will have their bank accounts frozen,  
7 and finally, that these sub-citizens are beginning to get  
8 fed up with the situation of being locked with no prospects  
9 for the future, and that for the first time in their lives  
10 they have the idea of leaving Canada, well, imagine that  
11 they won't be able to do that, not even with a negative  
12 test for the disease. They will remain in Canada against  
13 their will.

14                   What if these citizens were naively trying  
15 up a court challenge to these measures? What if, a few  
16 months after filing their appeal, the government decided to  
17 restore their rights without any explanation, just before  
18 the hearing? It would be said that it was a suspension and  
19 that the situation could return at any time, and it would  
20 then be decreed that all their appeals should be struck out  
21 as moot, because 'suspension' now means 'repealed' in our  
22 Newspeak.

23                   With this scenario in mind, let me ask you a  
24 question: would we then be fully democratic in Canada?  
25 Would we still have a system of check and balance, or would  
26 we have descended into health fascism? Would we still be in  
27 a jurisdiction where the *rule of law* prevails, or would we  
28 have become the laughing stock of the world?

1                   I'm responding to Justice Stratas' question.  
2 For my part, rather than simply surfing on the so-called  
3 "mootness" principle, I would like the judges who decide  
4 this issue to apply the inviolable principles of rights and  
5 freedoms that have underpinned our society for decades if  
6 not centuries. The violation of rights and freedoms must be  
7 analysed in the full context of its historical,  
8 philosophical and jurisprudential roots. The fundamental  
9 right to leave any country, including one's own, is what  
10 distinguishes a democratic civilisation from  
11 totalitarianism. It is disgraceful to violate this right  
12 for a year and then claim that the case is now moot.

13                   If that is the case, the fundamental  
14 question I would ask is: how low are we going to go? How  
15 far can a government violate fundamental rights and then  
16 give them back at one minute to midnight and get away with  
17 it? If Canadian citizens were deprived of the right to vote  
18 and then given it back, would their lawsuit be moot? If  
19 they were deprived of their nationality, making them  
20 stateless, and then given it back, would they still have a  
21 claim? If they were deprived of their freedom of movement  
22 and then had it restored, would it suddenly be "moot"?  
23 Where do we draw the line?

24                   The principle of mootness is an ad hoc,  
25 limited principle which is practical in basic situations  
26 and which has been totally abused in this case for purposes  
27 which are totally contrary to the most basic principles of  
28 legal philosophy. Mootness is very practical. I'd like to

1 be able to use this ruse as the government does.

2                   You know, I have a sentencing hearing  
3 tomorrow in Montréal. One of my clients has pleaded guilty  
4 to armed robbery. The stolen property was returned to the  
5 victim. Why are we trying to determine the appropriate  
6 sentence for my client? The victim has recovered his stolen  
7 property. The case has become moot. More generally, why did  
8 we bother with a Nuremberg trial? The war was over. There  
9 was no longer a dispute between the parties, it was "*moot*".  
10 I'd like to remind you that this trial led to the *Universal*  
11 *Declaration of Human Rights*, which proves that sometimes  
12 it's worth having a hearing.

13                   JUDGE LEBLANC: We did not try war crimes at  
14 Nuremberg...

15                   Mr NABIL BEN NAOUM: Yes, absolutely.

16                   JUDGE LEBLANC: You're going a bit fast  
17 there.

18                   Mr NABIL BEN NAOUM: If you like, Your  
19 Honour, I'm not waiting for war crimes to happen.

20                   So why are we making such a big deal out of  
21 the current Indigenous residential school debate? It's all  
22 over. Let all their claims be declared moot. Of course, the  
23 federal government will never dare take the field on this  
24 issue. And do you know why? It's because the decision-  
25 makers of yesterday are not the decision-makers of today,  
26 so it's all very well for the government players to  
27 flagellate themselves on this issue because they don't have  
28 the blood on their hands that they do in this case.

1                   You understand that justice cannot work that  
2 way. From a philosophical point of view, it is the  
3 behaviour at the time of the crime that is analysed and  
4 controlled, not today's situation. What kind of society do  
5 we have where the government can defend itself and the  
6 citizens cannot? Shall I tell you where this legal drift is  
7 leading? This situation, where the government can pass  
8 laws, repeal them right before the hearing and get away  
9 with it without any judicial review, is taking Canada into  
10 the realm of banana republics - and believe me, I know a  
11 lot of banana republics - a society where citizens never  
12 dare to assert their rights because there's this collective  
13 gravity where everyone knows that it's pointless, that  
14 against the government you're going to lose in advance, and  
15 this climate breeds cynicism, and it breeds crime.

16

17                   I'll give you a very specific example. In  
18 2022, some people approached me and offered to make me a  
19 false vaccination passport. I have relatives and clients  
20 who have done this and left Canada that way. Personally, I  
21 strictly refused. Firstly, because I never wanted to have  
22 to wave a vaccination card in my life, but above all  
23 because I wanted to have my rights recognised by the legal  
24 system, by the rule of law, in accordance with my  
25 professional oath and my values.

26                   Well, I can tell you that if this lawsuit  
27 were to end without a judicial remedy, if a similar  
28 situation were to arise again, do you think I would



1 continue to spend tens of thousands of dollars on my legal  
2 defence, that I would devote months of my life to it,  
3 putting my personal and professional life on hold? I can  
4 tell you that in that situation, at the first chance, I  
5 would order a false document, not because I'm a criminal,  
6 not because I'm an outlaw, but because my democratic  
7 institutions have given up, because I know that this is now  
8 the only way to assert my rights in my banana republic,  
9 because I've become jaded and have been dragged by force  
10 into cynicism and cunning.

11                   That's what I want the Court to consider  
12 today, the consequences of inaction, because to intervene  
13 is as much a sacrifice as to do nothing. The message that  
14 this sends to the reasonably informed public and to people  
15 who are trying to assert their rights in the right way is  
16 that there is a public interest in hearing the case which  
17 the judgment declares to be non-existent. In fact, the  
18 public interest in hearing the case is so non-existent that  
19 the court was overwhelmed and had to broadcast the hearing  
20 online.

21                   Now, Your Honour asked my colleague, Mr  
22 Presvelos, a question earlier, which I found very  
23 interesting, he asked him: "There is a...", I don't want to  
24 paraphrase you incorrectly, but as I understood the  
25 question, it was: "There is a public interest, but which  
26 public?". And your question made me think of a quote by the  
27 German pastor Niemöller, a survivor of the Nazi regime, who  
28 said:

1 "When they came for the communists, I  
2 said nothing. When they came for the  
3 socialists, I said nothing. When they  
4 came for the trade unionists, I said  
5 nothing. When they came for me, there  
6 was no one left to defend me."

7 So, yes, perhaps the public interest is  
8 aimed at only one category of citizen, but I submit to you  
9 that those who are not interested in this issue are equally  
10 mistaken, because their interest should be based on the  
11 question of what measure has been taken and not on whom it  
12 has affected.

13 The question that arises from your question  
14 is: who will be the unvaccinated people of tomorrow? Have  
15 they paid any attention to what has happened today? Please  
16 understand that I have no reason to be here today, no  
17 reason to have closed my office for a month of hearings  
18 during the full-time questioning of this appeal. I did it  
19 out of necessity, because I was tired of living in total  
20 cognitive dissonance, defending the principles of the rule  
21 of law in court every day, while not being able to exercise  
22 my own freedom. Normally there would be no reason for me to  
23 travel to Ottawa today. The last time I was here, in  
24 January 2022, there was a wonderful party in the city, and  
25 if you think that disturbed the peace of the capital and  
26 was unwelcome, then when revolt takes the democratic route,  
27 the legal route, it is essential that the courts do not  
28 turn a deaf ear to it.

1                   I would like to remind you of the words of  
2 Justice Stratas: "What approach promotes social cohesion  
3 and public confidence in the administration of justice? On  
4 the contrary, it is the passive approach and the  
5 abandonment of the courts that is making Canada the  
6 laughing stock of democratic societies. It's one thing to  
7 have our most basic rights suspended at the snap of a  
8 finger, but it's far worse not to have them at least  
9 analysed by a court of law.

10                   We've seen that Canada has a weak  
11 constitution. You know, the worst regimes in the world all  
12 have constitutions. North Korea has a constitution and it's  
13 very liberal. I invite you to read it. The constitution  
14 itself is a worthless piece of paper unless it is  
15 constantly defended, used and reaffirmed.

16                   Finally, I wanted to address the role of the  
17 respondent in the proceedings. In my appeal brief I  
18 entitled it "The Attorney General of Canada: from defender  
19 of the rule of law to segregationist official". I don't  
20 want to go on too long given the limited time I have; I  
21 would ask you to read my memorandum, but I do believe that  
22 this dispute is in the public interest, which is all the  
23 more important given that the respondent represents the  
24 federal Crown.

25                   The case law reminds us of the high  
26 standards to which public officials are held. In Elizabeth  
27 Sanderson's excellent book, *Duties and Ethical Challenges*  
28 of Government Lawyers, the Attorney General ... we are told

1 that the Attorney General is a central player in our  
2 democratic society whose role is to uphold the rule of law.  
3 He provides citizens with a bulwark against the arbitrary  
4 power of the state. Since the advent of the Canadian  
5 Charter, it has been his duty to analyse each provision in  
6 terms of rights and freedoms.

7 I'm not going to teach you that, Mr and Mrs  
8 Justice, who were representatives of the Crown. To be  
9 Attorney General is not to be buddy-buddy with the  
10 government, it is not to be its servant, ready to defend  
11 its every whim, even to the point of accepting the  
12 application of quasi-political apartheid in our country.  
13 It's about being an independent advisor to the Crown and  
14 intervening when things go too far.

15 I submit to you that what we have here is  
16 the most discriminatory, the most segregationist mandate of  
17 the century, which has been defended without interruption  
18 in a legal-industrial complex. To ban millions of citizens  
19 from leaving the country is, in my view, not only not moot,  
20 it is a policy rooted in such malice... the rule of law has  
21 been soiled to such an extent that it would be criminal to  
22 sweep it under the carpet. You owe it to yourself to take  
23 up this appeal, at least as regards whether the Court needs  
24 to hear it.

25 The members of the AG of Canada argued that  
26 I should not be allowed to enter an airport. In their oath  
27 of office, they claimed that I could be a danger to the  
28 quality of the air in the cabin of an aeroplane. You have

1 to realise the violence and vulgarity of such a statement.  
2 That's the kind of nonsense that I had to put up with. It  
3 was so dangerous for them to be in the same airport as me  
4 that they had no problem sharing the same courtroom. It was  
5 so dangerous for me to be near them on a plane that they  
6 had no problem running up to me and shaking my hand when we  
7 met in the middle of a pandemic, demonstrating the  
8 deception of their position, which was really just a fake  
9 stance. This matter has gone very far.

10                   It is through the decisions of the Federal  
11 Court that the members of the Attorney General's Office can  
12 be educated in the law and freedom and, if necessary, make  
13 adjustments. It is also your responsibility to provide them  
14 with substantive decisions that confirm or overturn their  
15 position. In this way, they may understand that the values  
16 that guide them and the virtue they promote should not be  
17 limited to putting pronouns in their signatures. Because  
18 pronouns are quite an inexpensive way to do so.

19                   I've dealt with cases of violence,  
20 procuring, attempted murder, sexual assault, theft, fraud,  
21 drug dealing, you name it. I have never been so disgusted -  
22 and I weigh my words - as I am with this one. To  
23 unilaterally decide that millions of citizens no longer  
24 belong to the corpus of society is what Hanna Arendt called  
25 'the banality of evil'.

26                   And don't get me wrong, I've disagreed with  
27 provincial and federal prosecutors on thousands of  
28 occasions. That's not the point. I'm someone who thrives on

1 debate. But within the framework of the rule of law. At no  
2 time in my career has a prosecutor said to me, "Colleague,  
3 exceptionally, your client should not have the benefit of  
4 the presumption of innocence", "exceptionally, your client  
5 should not have the right to counsel", "by way of  
6 exception, your client must remain in custody without a  
7 bail hearing". This was the first time I heard the  
8 government's henchmen say: "Exceptionally, you should not  
9 be allowed freedom of movement". By their behaviour they  
10 have bastardised the rule of law. They have promoted hatred  
11 of others. They had a chance to be great, to make a  
12 difference, a once-in-a-career chance. They chose to submit  
13 instead.

14 I'd like to take this opportunity to  
15 conclude by saying that I will stand in their way every  
16 time they decide to defend the undefendable. That the  
17 blackmail and violence of a state will never work on me.  
18 That I will always remain faithful to the values of non-  
19 discrimination and consent.  
20 Sadly, there is no vaccine against totalitarianism.

21 So there you have it, given the limited time  
22 I have, that's the picture I wanted to paint for you and my  
23 analysis of several issues as to why I think you have a  
24 responsibility as judges of the Federal Court of Appeal to  
25 take up this appeal.

26 It was all respectfully sent to you and I'm  
27 really looking forward to seeing what happens next.

28 Thank you for listening.

1 JUDGE LEBLANC: Thank you.

2 Mr NABIL BEN NAOUM: Any questions? Thank you  
3 very much.

4 JUDGE LOCKE: I think before we hear from the  
5 respondent we'll have a morning break of, let's say, 15  
6 minutes until five minutes to twelve.

7

8 --- The hearing is adjourned

9

10