

No. 24 4993  
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**CHOHAN FREIGHT FORWARDERS LTD.**

PETITIONER

AND:

**HIS MAJESTY THE KING IN THE RIGHT OF BRITISH COLUMBIA, AS  
REPRESENTED BY THE MINISTRY OF TRANSPORTATION AND  
INFRASTRUCTURE**

RESPONDENT

**PETITION TO THE COURT**

ON NOTICE TO:

Minister of Transportation and Infrastructure  
c/o Attorney General of British Columbia  
Deputy Attorney General  
Ministry of Attorney General  
PO Box 9290 Stn Prov Govt  
Victoria, BC V8Z 9J7

The address of the registry is: 850 Burdett Avenue, Victoria, BC V8W 1B4

The petitioner estimate that the hearing of the petition will take 2 hours.

[ X ] This matter is an application for judicial review.

[ ] This matter is not an application for judicial review. **This proceeding has been started by the petitioner for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
  - (i) 2 copies of the filed response to petition, and

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- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**TIME FOR RESPONSE TO PETITION**

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner is:  c/o Farris LLP Barristers & Solicitors 1005 Langley St., 3 <sup>rd</sup> Floor Victoria, BC V8W 1V7 Attention: Catherine George
(2)	The name and office address of the petitioner’s lawyer is:  Farris LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3  Attention: Catherine George  Fax number address for service (if any) of the petitioner: 250-405-1984 E-mail address for service (if any) of the petitioner: cgeorge@farris.com

**CLAIM OF THE PETITIONER**

**Part 1: ORDER(S) SOUGHT**

1. An order setting aside the Notice of Suspension of National Safety Code Safety Certificate #201909273 (the “**Certificate**”) dated December 28, 2023 (the “**Notice of Suspension**”) and the Notice of Suspension Pending Cancellation for the Certificate, dated January 23, 2024 (the “**Notice Pending Cancellation**”);

2. In the alternative, an order in the nature of *mandamus* compelling the Director to issue a notice of cancellation pursuant to s. 118.96(2) of the *Motor Vehicle Act*, RSBC 1996, c. 318 (the “MVA”), and the supporting evidentiary package and/or reasons, without further delay;
3. Costs; and
4. Such further and other relief as counsel may advise and this Honourable Court may grant.

## **Part 2: FACTUAL BASIS**

### **The Parties**

5. The petitioner, Chohan Freight Forwarders Ltd., is a British Columbia corporation. It was incorporated pursuant to the *Business Corporations Act*, SBC 2002, c. 57 on June 8, 2011. It provides trucking and transport services, specifically in the areas of freight forwarding, flat deck transportation, Super B trailer transportation and quad axel trailer transportation.
6. Kuljit Singh Chohan is the sole director and controlling mind of the petitioner.
7. The petitioner is a “carrier,” as defined in s. 37.01 of the *Motor Vehicle Act Regulations*, BC Reg 26/58 (the “Regulations”), and subject to the provisions of Division 37 of the Regulations.
8. The petitioner has certain employees who drive trucks owned by the petitioner. It also has relationships with a category of drivers known as “owner-operators” who are not employees, but take job dispatches from the petitioner. Because these drivers operate under the petitioner’s safety certificate, they are required by s. 37.14 of the Regulations to display “Chohan” logos on their vehicles. However, the owner-operators own their own vehicles.
9. The Ministry of Transportation and Infrastructure Commercial Vehicle Safety and Enforcement branch (“CVSE”) oversees safety regulations in the commercial transport sector in British Columbia, pursuant to, among other legislation, the MVA and the Regulations. The Director of Commercial Vehicle Safety (the “Director”) is appointed pursuant to s. 116.1 of the MVA and has specified powers under the MVA, Regulations, and other related legislation.

### **Safety Certificates under the MVA**

10. Pursuant to s. 37.07(1) of the Regulations, a carrier must not permit a driver to drive, and a driver must not drive a commercial motor vehicle for the carrier, unless the carrier holds a valid safety certificate.
11. Safety certificates are available upon application to the Director. The petitioner holds the Certificate, which was issued on July 26, 2011.

12. Pursuant to s. 118.95 of the MVA, the Director may suspend a safety certificate issued to a carrier if the Director “considers it desirable in order to ensure road safety.” As a result of s. 37.07(1) of the Regulations, the suspension of a safety certificate requires a carrier to park all commercial motor vehicles and cease on-road operations for the duration of the suspension.
13. On written notice, the Director may cancel the safety certificate issued to a carrier if she considers it desirable in order to ensure road safety: ss. 118.96(2)(a). In circumstances where the Director has given notice of cancellation under s. 118.96(2), the carrier has the right to apply to the Director to show cause why the cancellation should not be made (s. 118.97(1)), and, if the Director confirms the cancellation, there is an option to apply for reconsideration.
14. The Director may assign safety ratings to carriers either following the completion of an audit or while unaudited: s. 37.12(1)-(2), Regulations. As of December 31, 2023, the petitioner’s safety rating was satisfactory – unaudited.

### Highway Infrastructure Crash Incidents

15. A highway infrastructure crash (an “**infrastructure crash**”) is one in which a commercial vehicle crashes into a bridge or overpass, usually because the truck or load is oversize. The Ministry of Transportation and Infrastructure maintains a “Commercial Vehicle Bridge/Overpass Crash Report” online which lists infrastructure crashes from December 2021 to present (the “**Crash Report**”).
16. Enforcement action for infrastructure crashes can include violation tickets, suspensions pursuant to s. 118.95 of the MVA, or cancellation of a safety certificate under s. 118.96(2). According to the Crash Report, suspensions for carriers range in length from 7-42 days, with most in the 9-13 day range.
17. On the Crash Report, the petitioner is listed as the carrier on five infrastructure crash incidents between December 10, 2021 and June 8, 2022. CVSE took enforcement action against the petitioner for these five incidents. The cause of the incident and the enforcement action taken for each of these five incidents is described as follows:

Date	Location	Cause	Enforcement
December 10, 2021	Hwy 1 (192 St.)	Driver error: failed to observe conditions of permit	Violation tickets issued
February 12, 2022	Hwy 1 (264 St.)	Carrier/driver error: no permit	Violation tickets issued
February 17, 2022	Hwy 99 (112 St.)	Driver error: failed to follow approved route	Violation tickets issued; safety plan required

			(confirmed implementation)
June 1, 2022	Hwy 1 (No. 3 Rd.)	Carrier/driver error: failed to follow approved route	Violation tickets issued
June 8, 2022	Hwy 1 (264 St.)	Driver error: incorrect permit	Violation tickets issued; carrier suspended. Revised safety plan developed and implemented; suspension lifted on June 30, 2022.

18. As set out above, following the June 8, 2022 infrastructure crash, the Director issued a notice of suspension to the petitioner and suspended the Certificate. Following an investigation, CVSE notified the petitioner of areas of non-compliance, and the petitioner then developed an action plan outlining steps it would take to address the areas of non-compliance (the “**Safety Action Plan**” or “**Plan**”).
19. After some discussion between CVSE staff and the petitioner, CVSE indicated that it was satisfied that the Safety Action Plan would ensure compliance and on-road safety, and lifted the suspension on June 30, 2022. The suspension, including the investigation and development of the Safety Action Plan, lasted 22 days.
20. The petitioner implemented the Safety Action Plan in June 2022 and has fully complied with that Plan, including documenting all steps taken pursuant to the Plan since that date.
21. The petitioner was not involved with any further infrastructure crash incidents between June 8, 2022 and December 28, 2023.
22. On December 14, 2023, CVSE released a press release with respect to the implementation of a number of regulatory and enforcement changes in respect of infrastructure crashes. These changes included amendments to the Regulations as well as the release of CVSE Compliance Circular #05-2023, published December 14, 2023, which sets out a progressive enforcement framework for the Director’s use in deciding whether to take administrative action in response to infrastructure crashes by commercial motor vehicles in British Columbia.
23. The press release referred to the use of suspensions under s. 118.95 of the MVA as “penalties” and indicated that “longer suspensions” would be used as part of a move towards tougher enforcement against carriers involved in infrastructure crashes.
24. The press release also states that fines for offences related to over-height loads in BC are the highest in Canada, but that the amounts for the fines were currently limited by legislation.

### The December 28, 2023 Incident

25. On December 28, 2023, a Chohan-branded truck driven by an owner-operator, Jasveer Sangha, struck the 112 Street overpass on Highway 99 in Delta, BC (the “**Incident**”). The petitioner immediately reported this Incident to CVSE, conducted an internal investigation (the results of which were shared with CVSE), and cooperated with all requests for information from CVSE.
26. The petitioner’s internal investigation found the following with respect to the Incident:
- (a) On December 20, 2023, the petitioner’s dispatcher received an email from Marcon Metal Fabrication in Delta, BC (“**Marcon**”), advising of loads that would require a low bed trailer for frames of 10-10.6 feet. The petitioner understood that the total height of the load, taking into account the low bed trailer and stated load height, would be 14.1 feet, a height which does not require an oversized load permit. As such, the procedures with respect to oversized loads required by the petitioner’s Safety Action Plan did not appear to be applicable.
  - (b) In the early afternoon of December 27, 2023, Mr. Sangha received an email dispatch to pick up a load at Marcon. The load was to be delivered to Marcon Metal in Ferndale, Washington, USA.
  - (c) On the morning of December 28, 2023, Mr. Sangha arrived at Marcon, loaded his truck, and checked his load height. He advised that it was overheight at approximately 15 feet. At approximately 11:40 a.m., he telephoned the petitioner’s dispatch to advise that his load was oversized, and to obtain further instructions.
  - (d) The dispatcher who received the call advised Mr. Sangha to take no further steps, and transferred his call to the petitioner’s safety manager, Simran Sadiora, who advised Mr. Sangha that a special permit and route were required. Mr. Sadiora asked Mr. Sangha to re-confirm his load height, and directed him to wait until the permit was received, route directions were given, and the petitioner’s Oversized Directive was signed.
  - (e) Immediately after this call, Mr. Sadiora began the process of obtaining the permit.
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- (f) In the meantime, and contrary to the directions he received, Mr. Sangha – apparently at the suggestion of friends of Mr. Sangha’s unassociated with the petitioner – decided that the load height was acceptable to travel on Highway 99. In breach of the petitioner’s directions, he departed Marcon.
  - (g) At approximately 12:20 p.m., Mr. Sangha’s load hit the 112 St. overpass. At 12:22 p.m., he telephoned to notify the petitioner’s safety department.
27. At 12:33 p.m., Nitasha Chohan, the petitioner’s Director, Safety & Compliance, notified a CVSE staff member of the Incident by email. She then spoke to Gary Sidhu, Assistant Regional Manager at CVSE, on the telephone, and forwarded him the email.

28. Mr. Sangha has given a statement to the petitioner confirming his involvement as set out above and accepting full responsibility for contravening the clear instructions he received and acting contrary to the petitioner's policy. The petitioner has terminated its relationship with Mr. Sangha. The insurance on his truck has been cancelled, but due to the restrictions currently applicable to all vehicles registered under the Certificate (as referenced below), he is not able to transfer out to drive under another safety certificate.
29. At approximately 3:00 p.m., two CVSE staff members, Tony Lal (Assistant Supervisor, Carrier Safety Inspector) and Parteek Kumar (Carrier Safety Inspector), met with Ms. Chohan, Mr. Sadiora, and Suneet Chohan, one of the directors of the petitioner, to discuss the Incident.
30. At approximately 5:30 p.m. that evening, at Mr. Lal's request, Ms. Chohan provided extensive background materials to CVSE by email.

### **The Suspension and Investigation**

31. On the evening of December 28, 2023, the Director issued a Notice of Suspension of Safety Certificate to the petitioner, pursuant to s. 118.95 of the MVA. The Notice of Suspension states that CVSE will be conducting an investigation into the Incident (the "**Investigation**") and that the suspension will remain in place, at a minimum, until the Investigation is complete.
32. As a result of the suspension, the petitioner was required to park all commercial motor vehicles and cease on-road operations.
33. In the days that followed the Incident, the petitioner responded promptly to all requests for information from CVSE and provided relevant documents and information as they became available. The petitioner was also in contact with CVSE with respect to matters related to the suspension. The following sets out the petitioner's direct contact with CVSE in respect of the Incident in the period between December 28, 2023 and the date of the petition:
  - (a) On December 29, 2023, Mr. Sangha gave a written statement to the petitioner in which he accepted full responsibility for failing to follow directions. The written statement was provided to CVSE that day.
  - (b) On December 29, 2023, Ms. Chohan emailed Mr. Lal and others at CVSE providing the preliminary results of the petitioner's investigation of the Incident, along with supporting documentation.
  - (c) On December 29, 2023, Ms. Chohan emailed CVSE requesting permission for three trucks that were in the USA to cross the border, in order to ensure that they were not stuck across the border for the course of the suspension. CVSE instructed that the commercial vehicles in question should be parked at Pacific Scale upon arrival into British Columbia. The petitioner followed these instructions.

- (d) Mr. Sangha met with CVSE representatives on January 3, 2024 and gave a statement about the Incident. After that meeting, CVSE representatives came into the petitioner's office and spoke with Ms. Chohan, among others.
  - (e) On January 4, 2024, Ms. Chohan called Mr. Sidhu and asked for an update on the Investigation. He told her he would have an update by the end of that week.
  - (f) On January 5, 2024, Ms. Chohan again asked for an update from Mr. Sidhu, and was told he would have an answer shortly.
  - (g) On January 5, 2024, Ms. Chohan emailed CVSE with regards to steps taken by the petitioner since the Incident to make its safety policies as robust as possible. She also included the results of Mr. Sangha's December 29 drug test, which were negative.
  - (h) On January 8, 2024, Mr. Kumar wrote to Ms. Chohan seeking additional documents, which she provided the same day.
  - (i) On January 10, 2024, Ms. Chohan called Mr. Sidhu seeking an update. He told her that he should have an answer by later that afternoon. When she received no response, she contacted him again that afternoon, at which point he said he hoped to have an update by the next day.
  - (j) On January 16, 2024, Ms. Chohan called Mr. Sidhu and left a voicemail. He did not respond.
34. The oversized load involved in the Incident was taken to a storage yard in Delta, BC, and inspected by CVSE at some point prior to January 5, 2024, when Marcon (with CVSE permission) picked up the load.
35. The petitioner repeatedly confirmed its willingness to participate in the Investigation and provide any information or documents CVSE required, and has done so as and to the full extent requested by CVSE.

#### **Counsel Correspondence with CVSE**

36. On January 5, 2024, counsel for the petitioner wrote to the Director in relation to the Notice, requesting that the Director exercise her power under s. 118.98 of the MVA to rescind the Notice of Suspension.
37. On January 12, 2024, the Director responded with a refusal to rescind the Notice of Suspension. She stated that the Investigation was still ongoing and that until it was complete and she had reviewed the results, she still considered the suspension desirable in order to ensure road safety.
38. On January 16, 2024, counsel for the petitioner wrote to the Director again, seeking information with respect to the expected end date of the investigation.



39. On January 17, 2024, counsel for the petitioner wrote to Karen Coverett, CVSE's Manager, National Safety Code, to express concern with respect to the timeline of the Investigation and to request a time frame in which the petitioner might expect the Investigation to conclude.
40. On January 19, 2024, counsel for the petitioner wrote to Ms. Coverett again, stating that the petitioner was left with no choice but to assume that the Investigation had in fact completed.
41. On the morning of January 22, 2024, Ms. Coverett replied to state that she had been unexpectedly out of the office on January 18 and 19, 2024, and that she would review the matter with the Director that morning.
42. Counsel for the petitioner sent further emails to Ms. Coverett on January 22, 2024 and January 23, 2024, seeking an update.
43. On January 23, 2024, Ms. Coverett wrote to counsel for the petitioner to advise that CVSE had concluded the Investigation. She stated that the Certificate would remain suspended pending its cancellation, and further advised that CVSE staff were preparing the cancellation order and the accompanying evidentiary package detailing the reasons for the Director's decision.
44. In her January 23, 2024 letter, Ms. Coverett enclosed a further notice, issued by the Director, that the Certificate remained suspended, pursuant to section 118.95 and 118.98 of the Act, pending cancellation of the Certificate (the "**Notice Pending Cancellation**").
45. Ms. Coverett also enclosed a copy of the "Show Cause Hearing Guidelines" which provide guidance on the process for challenging a cancellation under s. 118.96(2) of the MVA, as provided for in s. 118.97(1). However, the show cause process does not begin until the notice of cancellation is actually issued by the Director.
46. In the days following January 23, 2024, the petitioner did not receive any further communication from CVSE or the Director.
47. On January 29, 2024, counsel for the petitioner wrote to Ms. Coverett to express concern that the petitioner had not received either the cancellation order or the supporting evidentiary package, and requested both without further delay.
48. On February 1, 2024, Ms. Coverett responded to the January 29, 2024 letter, stating that preparation of an evidentiary package "typically can take up to three months to complete depending on the complexity of the package."
49. The petitioner has not received a cancellation order or any supporting evidentiary package from CVSE or the Director as of the time of filing this petition.

### **Effect of the ongoing suspension**

50. As a result of the suspension, the petitioner's 63 drivers and affiliated owner-operators, many of whom are the sole income for their families, became unable to work and suffered (and continue to suffer) corresponding economic hardship. Company drivers are paid based on kilometres driven and/or loads delivered, while owner-operators are dispatched for company jobs and paid a percentage of the invoice. Of the drivers who are currently unable to drive, a majority are company drivers.
51. During the suspension office staff, including dispatchers, accounting, and safety managers, are still being paid.
52. The petitioner itself is also suffering significant economic hardship, with losses in excess of \$1,000,000 per week while the suspension remains in effect. Further, it has already lost clients and contracts, including some in the range of \$2-3 million in value, along with reputational harm.
53. Owner-operators working for the petitioner have also been largely unable to operate on their own behalf because the insurance for all the vehicles that drive for CFF, including the owner-operators' vehicles, is linked to the Certificate.
54. On January 24, 2024, the petitioner's insurance broker asked the National Safety Code group at CVSE ("NSCBC") whether the insurance for the owner-operators' vehicles could be transferred to another certificate-holder, in order to allow the individual drivers to continue to earn income during the period the Certificate is suspended.
55. In correspondence over January 24-31, 2024, NSCBC informed the insurance broker that owner-operators who were operating under the Certificate would be released to transfer to another certificate only where they provided proof of the taxable owner, the number of the NSC Safety Certificate they would be moving to, and a signed authorization form from the new NSC holder. Owner-operators who wish to place storage insurance on their vehicles will be permitted to do so, but will be restricted from transfer to another safety certificate until the other requirements are met.
56. Further, NSCBC informed the insurance broker that vehicles owned by the petitioner could be released (and the current insurance cancelled) only to be held under a storage insurance policy.
57. As of February 2, 2024, nine owner-operators' vehicles had been released and placed on storage insurance in the owners' names. However, as the emails from NSCBC contemplate, they are still subject to restrictions and cannot transfer to drive under another carrier's safety certificate.

#### **CVSE's enforcement steps against Chohan Group Ltd.**

58. Kuljit Singh Chohan's son, Suneet Chohan, owns and operates a company in Alberta called Chohan Group Ltd., which also operates in the commercial transport industry. Although there is a family connection between the two companies, they are separate legal entities which run their own transit operations.

59. On January 16, 2024, Chohan Group Ltd. learned that the Director had suspended its ability to receive oversize permits in British Columbia, due to its “connection” with the petitioner. While Chohan Group Ltd. has sought judicial review of that decision, pending the outcome of that review, it remains subject to the restriction on oversize permits while the suspension of the petitioner continues.

**Part 3: LEGAL BASIS**

60. The petitioner pleads and relies on ss. 1, 2 and 5 of the *Judicial Review Procedure Act*, RSBC 1996, c. 241; ss. 118.94-118.98 of the MVA; and ss. 1 and 37.07-37.14 of the Regulations.

**The Suspension is Unreasonable**

61. The Director’s decision to suspend the Certificate is unreasonable, and the Notice of Suspension and Notice Pending Cancellation should be set aside.
62. A reasonable decision is one that is based on an internally coherent and rational chain of analysis, and that is justified in relation to the facts and law that constrain the decision maker: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 85.
63. Elements of the legal and factual context operate as constraints on the decision maker in the exercise of delegated powers. Among other things, these constraints include the governing statutory scheme: the decision must comply with the rationale and purview of the statutory scheme under which it is adopted, and any exercise of discretion must accord with the purposes for which it was given: *Vavilov*, at paras. 106-108.
64. Finally, a reasonable decision must take the evidentiary record and general factual matrix that bears on the decision into account. It will be unreasonable if the decision maker fundamentally misapprehends or fails to account for the evidence before it: *Vavilov*, at para. 126.
65. In this case, the Director may suspend a carrier’s safety certificate only where she considers it “desirable in order to ensure road safety” (MVA, s. 118.95). The petitioner says that, given the record with respect to the Incident and the delay in issuance of a Notice of Cancellation, the continued suspension is unreasonable.
66. Prior to December 28, 2023, the Director was satisfied with the petitioner’s Safety Action Plan and its ability to ensure road safety. The uncontroverted evidence is that the Incident involved a decision by an independent contractor to ignore the petitioner’s safety policy and carry a load against the petitioner’s express direction. The independent contractor has admitted he acted without the knowledge of the petitioner and contrary to the petitioner’s express instructions. The petitioner has terminated its relationship with the independent contractor.

67. There is no evidence of any “unwillingness or inability of [the petitioner] to operate in compliance with relevant regulations which indicates an ongoing road safety risk,” as referred to in the Notice – either in relation to the Incident itself, or in the future.
68. Neither the Notice of Suspension, Notice Pending Cancellation, nor the correspondence from CVSE accounts for these facts. Further, they do not provide a chain of analysis that provides a basis on which the Director could conclude that the ongoing suspension is desirable to ensure road safety.
69. Based on the record and public and policy statements from CVSE and the Minister of Transportation and Infrastructure, it appears that the suspension was imposed, not to ensure road safety, but in order to further penalize the petitioner for the Incident. Ancillary actions taken by CVSE – including the refusal to allow to allow the petitioner’s drivers and owner-operators to transfer their insurance to another certificate-holder, which would allow them to continue working and mitigate their damages, as well as the imposition of a ban on the issuance of oversize permits for a separate legal entity with a family connection to the petitioner – further suggest that the Director’s purpose is punitive, rather than rooted in safety.
70. To the extent that the suspension was imposed or has been continued for purposes other than ensuring road safety, it is unreasonable and unauthorized: *A.R.S. Trucking & Welding Limited v. BC (Transportation and Infrastructure)*, 2023 BCSC 1486 at paras. 85-86.
71. Further, and in the alternative, the continued suspension of the Certificate is unreasonable because it does not “ensure road safety” in the face of the alternative – namely, cancellation of the Certificate. Whereas (as discussed below) a formal cancellation would engage a statutory process allowing the petitioner to challenge that decision, the Director’s continuing failure to issue such a decision while imposing an unlimited “suspension” has the same negative consequences to the petitioner as a cancellation, while denying the petitioner procedural fairness by preventing it from challenging the Director’s decision to cancel the Certificate.

### **There is No Adequate Alternative Remedy**

72. Pursuant to s. 118.97 of the MVA, a carrier who receives a notice of cancellation may apply to the Director to show cause why the cancellation should not be made. Pursuant to CVSE policy, a carrier must provide the Director with a Notice of Intention to Show Cause within 5 business days of receiving the notice of cancellation.
73. There is no equivalent statutory mechanism to challenge suspensions. Therefore, because the petitioner has received no formal notice of cancellation, it is prevented from pursuing the statutory avenues to challenge the decision. In short, the Petitioner is in an administrative “no man’s land” with no way to carry on business or ability to challenge the Director’s decision.

74. In the circumstances, there is no adequate alternative remedy to address the issues raised by the petitioners. Judicial review is therefore available: *Strickland v. Canada (Attorney General)*, 2015 SCC 37 at para. 42.

**The Director Has a Duty to Issue a Cancellation Order in a Timely Manner**

75. In the alternative, mandamus should issue to require the Director issue a notice of cancellation and evidentiary package forthwith.
76. Administrative decision-makers cannot indefinitely delay making a decision pursuant to a statutory regime; they have a legal duty to complete the decision-making process in a reasonable time: *Wu v. Vancouver (City)*, 2019 BCCA 23 at paras. 39-41; *Abdolkhaleghi v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 729 at para. 8. This duty requires that the decision-maker make a decision, not to make a particular decision where the official has a choice or discretion under the regulatory scheme.
77. Where there is undue procedural delay without adequate explanation, *mandamus* lies to correct defects in the administration of justice: *Wu, supra*; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para. 80; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras. 149-150.
78. This is particularly true where delay creates a hardship: *Blencoe* at para. 149, and cases cited therein.
79. In this case, the Director had a legal duty to conduct her investigation in a reasonable time, and once concluded, if her decision was to cancel the Certificate, provide formal notice of the cancellation without undue delay. Criteria for determining when delay is unreasonable include (1) whether the delay in question is longer than the nature of the process *prima facie* requires; (2) the party seeking action is not responsible for the delay; and (3) the authority responsible for the delay has not provided satisfactory justification: *Abdolkhaleghi* at para. 14.
80. By January 23, 2024, the Investigation had already continued for significantly longer than the nature of that process required: to the petitioner's knowledge, no substantive steps were taken in the Investigation after January 8, 2024, and all the facts which the petitioner understands could have been relevant to the Director's decision were known to CVSE by at least that day.
81. CVSE advised on January 23, 2024 that it had concluded the Investigation and that CVSE staff were preparing the cancellation order and the accompanying evidentiary package. The Director issued a Notice of Suspension pending cancellation of the certificate.
82. CVSE has informed the petitioner that the issuance of the notice of cancellation and supporting evidentiary package will take up to three months. The Director had already reviewed the results of the Investigation prior to issuing the Notice Pending Cancellation. According to CVSE, the evidentiary package is based on the results Investigation and the petitioner's carrier history, both of which are readily available to CVSE. In the

circumstances, that timeline for the preparation of the evidentiary package is unreasonable; it is certainly longer than the nature of the process *prima facie* requires. This is particularly true in circumstances where, under the Show Cause Hearing Guidelines, the petitioner will have only 15 business days to provide a response to the evidentiary package. No satisfactory explanation has been given for this delay.

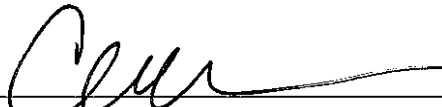
83. The test for granting mandamus is set out in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742, aff'd [1994] 3 S.C.R. 1100. The following requirements must be met:
- (a) There must be a public legal duty to act;
  - (b) The duty must be owed to the appellant;
  - (c) There is a clear right to the performance of the duty;
  - (d) No other adequate remedy is available to the applicant;
  - (e) The order sought is of some practical value or effect;
  - (f) No equitable bar exists;
  - (g) The balance of convenience favours the issues; and,
  - (h) Where the duty sought to be enforced is discretionary, consideration must be given to the nature and manner of exercise of the discretion.

84. All of these requirements are met in this case.

**Part 4: MATERIAL TO BE RELIED ON**

85. Affidavit #1 of Nitasha Chohan, made 02/Feb/2024;
86. Affidavit #1 of Jordanna Littau, made 05/Feb/2024; and
87. Such other material as counsel shall advise and this Honourable Court may permit.

Dated: 05/Feb/2024

  
\_\_\_\_\_  
Signature  
 Lawyer for petitioner(s)  
**Catherine George**

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

Date: \_\_\_\_\_

Signature of \_\_\_\_\_

Judge  Associate Judge