

Federal Court



Cour fédérale

**Date: 20250411**

**Docket: T-473-24**

**Citation: 2025 FC 679**

**Ottawa, Ontario, April 11, 2025**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**HAMMAM FARAH, HIBA FARAH,  
AYMAN OWEIDA, X. Y., CANADIAN  
LAWYERS FOR INTERNATIONAL  
HUMAN RIGHTS, AND AL-HAQ - LAW IN  
THE SERVICE OF MAN**

**Applicants**

**and**

**MINISTER OF FOREIGN AFFAIRS AND  
ATTORNEY GENERAL OF CANADA**

**Respondents**

**and**

**PRATT & WHITNEY CANADA CORP,  
TTM TECHNOLOGIES TORONTO INC,  
GEOSPECTRUM TECHNOLOGIES INC,  
EXCELITAS CANADA INC,  
APOLLO MICROWAVES LTD**

**Respondents**

**ORDER AND REASONS**

## I. Overview

[1] The applicants appeal the decision of Associate Judge Cotter, acting as Case Management Judge, refusing to allow certain amendments to their notice of application for judicial review. The application pertains to the issuance of permits under the *Export and Import Permits Act*, RSC 1985, c E-19 [*EIPA*] to broker or export military goods or technology to Israel on or after October 9, 2023, when Israel commenced a military campaign in Gaza in response to the attacks of October 7, 2023. In its current form, the application seeks declaratory relief as well as orders quashing existing permits, requiring outstanding applications for such permits to be denied, and removing Israel from the Automatic Firearms Country Control List established under the *EIPA*. The applicants allege that permitting the export of military goods and technology to Israel is contrary to sections of the *EIPA*, the *Canadian Charter of Rights and Freedoms*, and other domestic and international legal obligations.

[2] The contested amendments that are the subject of this appeal fall into two categories: (1) amendments adding an allegation of breach of section 15 of the *Charter* to the existing allegation of breach of section 7 [the Section 15 Amendments]; and (2) amendments seeking to strike down both paragraph 2(a) of the *Export Control List*, SOR/89-202, established under section 3 of the *EIPA*, and *General Export Permit No 47 – Export of Arms Trade Treaty Items to the United States*, SOR/2019-230 [*GEP No. 47*] [the Indirect Arms Exports Amendments].

[3] The Case Management Judge disallowed the Section 15 Amendments because he found they were inadequately pleaded to meet the requirements of Rule 301 of the *Federal Courts*

*Rules*, SOR/98-106. He disallowed the Indirect Arms Exports Amendments because he found they were not in the interests of justice, since they would delay the expeditious resolution of the application and would not facilitate the Court's consideration of the true substance of the dispute on its merits.

[4] For the reasons provided below, I conclude the Case Management Judge did not err in refusing leave to make the Section 15 Amendments because they fail to meet the threshold requirement of an adequately pleaded cause of action. With respect to the Indirect Arms Exports Amendments, I conclude that I need not determine the applicants' arguments with respect to the Case Management Judge's analysis of the interests of justice, since those amendments should in any case be refused because they are contrary to the Rule 302 of the *Federal Courts Rules*. That rule contains a general requirement that an application for judicial review be limited to a single order in respect of which relief is sought. As discussed further below, the Indirect Arms Exports Amendments pertain to different decisions or matters than the issuance of the permits currently challenged in this application, the multiple decisions cannot be described as part of a continuing course of conduct, and the relevant factors do not support the granting of relief from the requirements of Rule 302 in this case.

[5] The appeal motion is therefore dismissed, with costs to the government respondents in the cause. The corporate respondents, who will be added as parties to the application upon filing of the amended notice of application, did not respond to the original motion or to this appeal. I will therefore refer to the government respondents as the respondents in these reasons.

## II. Issues and Standards of Review

[6] The applicants' appeal motion raises the following issues:

- A. Did the Case Management Judge apply the wrong legal test?
- B. Did the Case Management Judge err in refusing to allow the Section 15 Amendments?
- C. Did the Case Management Judge err in refusing to allow the Indirect Arms Exports Amendments?

[7] The parties agree that an appeal of a decision of an Associate Judge under Rule 51 of the *Federal Courts Rules* is undertaken on the usual appellate standards of review. Questions of law, including those extricable from questions of mixed fact and law, are reviewed on the correctness standard, while questions of fact and mixed fact and law are reviewed on the “palpable and overriding error” standard: *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 19, 36; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 66–69, 79; *Canada v Pomeroy Acquireco Ltd*, 2021 FCA 187 at para 2; *Brink v Canada*, 2024 FCA 43 at paras 40–41.

[8] It is worth underscoring, as the respondents do, that this Court has frequently recognized the important role of case management judges in the efficient management of proceedings. Owing to their ongoing involvement in a proceeding, case management judges are familiar with the history, circumstances, and context of litigation. As a result, this Court will not intervene lightly in a discretionary decision of a case management judge: *Pharmascience Inc v Janssen*

*Inc*, 2024 FC 440 at para 10, citing *Hutton v Sayat*, 2020 FC 1183 at para 28; *Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181 at para 14. This does not change the applicable standards from *Housen*, but simply serves as a reminder of the importance of deference in discretionary and factually-suffused determinations: *Hospira* at paras 102–103. Contrary to the applicants’ submissions, I do not consider this principle to be in any way attenuated by the early stage of the proceeding. The principle stands as a general one, without parsing the precise extent to which a case management judge has been involved in a particular proceeding at the time they made the decision under appeal.

[9] In the present case, the first issue goes to the legal test applied by the Case Management Judge and is reviewable on the standard of correctness. The second and third issues pertain to the application of the test to the amendments at issue; these issues are reviewable on the palpable and overriding error standard, except to the extent that the Case Management Judge made an extricable legal error in undertaking that application.

### III. Analysis

#### A. *The Case Management Judge did not Apply the Wrong Legal Test*

##### (1) Legal principles on a motion to amend a notice of application

[10] Rule 75(1) of the *Federal Courts Rules* permits the Court, on motion, at any time, to allow a party to amend a document, on such terms as will protect the rights of all parties. The principles applicable on a motion to amend are set out in a number of decisions of this Court and the Federal Court of Appeal. Frequently cited is the Federal Court of Appeal’s decision in

*Canderel Ltd v Canada*, 1993 CanLII 2990 (FCA), [1994] 1 FC 3. There, the Court of Appeal said the following:

[...] while it is impossible to enumerate all the factors that a judge must take into consideration in determining whether it is just, in a given case, to authorize an amendment, the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice.

[Emphasis added; *Canderel* at p 10.]

[11] This statement of the relevant principles has been reiterated by the Court of Appeal in cases including *Merck & Co, Inc v Apotex Inc*, 2003 FCA 488 at para 30; *Sanofi-Aventis Canada Inc v Teva Canada Limited*, 2014 FCA 65 at para 13; *Enercorp Sand Solutions Inc v Specialized Desanders Inc*, 2018 FCA 215 at para 19; *McCain Foods Limited v JR Simplot Company*, 2021 FCA 4 at para 20; and *Pomeroy* at para 4. In *Sanofi-Aventis*, the Court of Appeal underscored that the requirements set out in *Canderel* that (a) there be no injustice or prejudice that cannot be compensated for in costs, and (b) the interests of justice be served by the amendments, represent two independent criteria that must be met by the party seeking amendment: *Sanofi-Aventis* at para 15; *Janssen Inc v Abbvie Corporation*, 2014 FCA 242 [Janssen] at para 9.

[12] The Court of Appeal in *Canderel* went on to discuss the various elements of the general rule stated above, including the “real questions in controversy,” the “injustice to the other party” and the “interests of justice”: *Canderel* at pp 10–13. In addressing the interests of justice, the

Court of Appeal adopted the following language of Justice Bowman in *Continental Bank*

*Leasing Corp v Canada*, 1993 CanLII 17065 (TCC):

[...] I prefer to put the matter on a broader basis: whether it is more consonant with the interests of justice that the withdrawal or amendment be permitted or that it be denied. The tests mentioned in cases in other courts are of course helpful but other factors should also be emphasized, including the timeliness of the motion to amend or withdraw, the extent to which the proposed amendments would delay the expeditious trial of the matter, the extent to which a position taken originally by one party has led another party to follow a course of action in the litigation which it would be difficult or impossible to alter and whether the amendments sought will facilitate the court's consideration of the true substance of the dispute on its merits. No single factor predominates nor is its presence or absence necessarily determinative. All must be assigned their proper weight in the context of the particular case. Ultimately, it boils down to a consideration of simple fairness, common sense and the interest that the courts have that justice be done.

[Emphasis added; *Continental Bank* at p 2310.]

[13] Again, this passage from *Continental Bank*, as adopted in *Canderel*, has been frequently cited by the Federal Court of Appeal: *Merck* at para 30; *Janssen* at para 3; *Enercorp* at para 20.

[14] I note that “the real questions in controversy,” which is part of the general formulation found at page 10 of *Canderel*, appears essentially synonymous with “the true substance of the dispute on its merits,” a factor in assessing the interests of justice discussed in *Continental Bank* and adopted at page 12 of *Canderel*. Whether this is considered as an independent criterion or as an aspect of the interests of justice, it is clear that it is a relevant and important inquiry in assessing whether an amendment should be granted: *Pomeroy* at para 4; *Apotex Inc v Bristol-Myers Squibb Company*, 2011 FCA 34 at paras 4, 33–35; *Janssen* at para 3.

[15] In addition to the foregoing principles, an amendment must yield a sustainable pleading, that is, a pleading that meets the requirements of the *Federal Courts Rules* and is not liable to be struck out: *Teva Canada Limited v Gilead Sciences Inc*, 2016 FCA 176 at paras 28–31; *Enercorp* at para 22; *McCain* at paras 20–23; *GE Renewable Energy Canada Inc v Canmec Industrial Inc*, 2024 FC 887 at paras 10–15, aff’d 2024 FCA 139 at para 5. This has been described as a “threshold issue,” and will normally be addressed before the Court considers other matters such as prejudice and the interests of justice: *Teva* at para 31; *Merck* at para 39; *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2020 FC 348 at para 67; *Australian Mud Company Pty Ltd v Boart Longyear Group Ltd*, 2024 FC 1217 at paras 12–14.

[16] Both Rule 75(1) and the foregoing principles apply to motions to amend a notice of application: *Groupe Maison Candiac Inc v Canada (Attorney General)*, 2017 FCA 216 at paras 24, 37, 43; *Canadian Constitution Foundation v Canada (Attorney General)*, 2022 FC 1232 at paras 3, 6, 9–13; *GCT Canada* at paras 2, 66–67. In the present case, two rules that govern the contents of notices of application are relevant to the assessment of whether the applicants’ proposed amendments would comply with the *Federal Courts Rules*, namely Rules 301 and 302.

[17] Rules 301(d) and (e) of the *Federal Courts Rules* require that a notice of application set out, respectively, “a precise statement of the relief sought” and “a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on.” The Court of Appeal has described the requirement of a “complete and concise” statement of grounds to mean that the notice of application must contain all the legal



bases and material facts that, if taken as true, will support granting the relief sought, and all the material facts necessary to show that the Court can and should grant the relief sought, but not the evidence by which those facts are to be proved: *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at paras 38–39. While the grounds in a notice of application are to be concise, they must not be bald. In other words, they must go beyond stating a conclusion of law to say how that conclusion is to be reached: *JP Morgan* at paras 42–43.

[18] As the Court of Appeal has emphasized, Rule 301 is mandatory and its requirements are not merely technical; they ensure among other things that respondents have adequate notice of the case being brought against them so they can meaningfully respond: *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at paras 38, 41; *Chad v Canada (National Revenue)*, 2023 FC 1481 at para 35. A notice of application that fails to provide an adequate complete and concise statement of the grounds intended to be argued is liable to be struck as failing to comply with Rule 301 and/or failing to disclose a reasonable cause of action: *JP Morgan* at paras 38–48; *Nicolas v Canada (Attorney General)*, 2022 FC 439 at paras 14–17, 21–22, 32; *Chad* at paras 10–13, 34–35. As a corollary, an amendment that does not satisfy the requirements of Rule 301 should not be permitted, as it fails to meet the threshold issue of yielding a sustainable pleading and/or is not in the interests of justice: *Vachon Estate v Canada (Attorney General)*, 2024 FC 709 at para 9; *McCain* at para 23.

[19] Rule 302 provides that unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought. An amendment that would result in a notice of application that violates Rule 302 should not be permitted, unless the

Court concludes that an order otherwise is appropriate in the circumstances: *Truehope Nutritional Support Ltd v Canada (Attorney General)*, 2004 FC 658 at paras 4–9, 18–19; *Servier Canada Inc v Canada (Health)*, 2007 FC 196 at paras 1, 11–20. I will address the principles applicable under Rule 302 further below.

(2) The Case Management Judge did not err in setting out the test

[20] At paragraphs 16 to 19 of his decision, the Case Management Judge set out the principles applicable to amendments. He referred to Rule 75, cited *Continental Bank, Janssen*, and *Enercorp*, and quoted Justice Manson’s summary of *Janssen* at paragraph 50 of *Tait v Canada (Royal Canadian Mounted Police)*, 2024 FC 217. He also referred to the threshold issue that the amended pleading must have a reasonable prospect of success, as set out in *Teva* and *Enercorp*.

[21] The applicants assert that the Case Management Judge erred in not stating the entirety of the “general rule” as formulated in *Canderel*, as reproduced at paragraph [10] above. In particular, they argue the Case Management Judge only addressed the interests of justice, and not the “first part of the test,” namely that “an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties.” The applicants claim that the Federal Court of Appeal has described this as the “controlling principle” of the test, citing paragraph 4 of the Court of Appeal’s decision in *Pomeroy*. They contend that the “overarching standard is one of permissiveness or accommodation – that an amendment generally ‘should be allowed’.”

[22] There is no merit to this argument. The “controlling principle” discussed in *Pomeroy* is not simply the “should be allowed” language from *Canderel*, as the applicants suggest. It is the entire “general rule” from *Canderel*, including the requirements that an amendment not result in an injustice not compensable in costs and that it serve the interests of justice: *Pomeroy* at para 4. As in *Canderel*, the “should be allowed” language is presented in *Pomeroy* together with the “real questions in controversy” language and the important “provided” that introduces the independent requirements of lack of prejudice and the interests of justice:

An amendment need not be “vital” to a case to be allowed. The controlling principle is that an amendment should be allowed at any stage of an action if it assists in determining the real questions in controversy between the parties, provided it would not result in an injustice not compensable in costs and that it would serve the interests of justice. A court should give significant consideration to amendments which further the ability of the trial court to determine the questions in controversy [...]

[Emphasis added; citations omitted; *Pomeroy* at para 4.]

[23] Thus, as the respondents correctly state, the interests of justice form part of the controlling principle. Indeed, Justice Rennie later referred to the interests of justice as the “over-arching criteria” in granting an amendment: *Pomeroy* at para 13. While the approach to amendments is a “liberal” one, the Court of Appeal has directly rejected arguments that put primacy on the permissiveness of the test without recognizing the importance of the twin criteria of lack of prejudice and the interests of justice: *Sanofi-Aventis* at paras 13–17; *Merck* at paras 35–36, 42.

[24] There is, in my view, no magic in reiterating the specific formula of *Canderel*. What is clear is that a moving party must show that their amendments (i) yield a sustainable pleading as a

threshold issue; (ii) will not cause incompensable injustice or prejudice to the other party; and (iii) are in the interests of justice. If the moving party shows this, the amendments should be granted. There is no indication that the Case Management Judge took any other approach.

[25] In reply submissions, the applicants argued that the term “interests of justice” as used in the jurisprudence above is “virtually meaningless and is not a complete legal test on its own.” Again, I reject this argument. It runs directly contrary to the Federal Court of Appeal’s confirmation that a party seeking to make amendments must establish, as an independent criterion, that the amendments are in the interests of justice: *Sanofi-Aventis* at para 15; *Janssen* at para 9.

[26] The applicants’ argument appears to be that the common term “interests of justice” must be given meaning through guidance that calibrates it to the legal context in which it is used: *Ontario (Environment, Conservation and Parks) v Henry of Pelham Inc*, 2018 ONCA 999 at paras 47–48. However, that is precisely what cases such as *Canderel*, *Sanofi-Aventis*, *Janssen*, *Enercorp*, and *Pomeroy* have done in adopting the language of *Continental Bank*: they provide guidance on the factors relevant to the interests of justice when considering whether to allow an amendment, while confirming that list of relevant factors is not exhaustive. The applicants are simply incorrect to assert that “the only context is the opening line exhorting that, in principle, ‘an amendment should be allowed at any stage’.” To the contrary, the context for the interests of justice on a motion to amend pleadings is found in the various circumstances and practicalities described in *Continental Bank*, *Canderel* and subsequent cases, namely timeliness, delay, resulting impact on the litigation and the courts, impact on a party’s positions, facilitating

consideration of the true substance of the matter and, ultimately, “simple fairness, common sense and the interest that the courts have that justice be done.”

[27] It is worth noting that if, as the applicants contend, it is an error of law not to refer to the “should be allowed” language of the *Canderel* test, it is an error of law the Federal Court of Appeal itself committed in *Janssen*, one of the frequently cited cases on amendments. In *Janssen*, the Court of Appeal stated that “the applicable test is that taught by” *Continental Bank*, quoting the passage reproduced at paragraph [12] above in respect of the interests of justice, and emphasizing its final three sentences. This is the passage cited and summarized in *Tait*, which the Case Management Judge reproduced in his decision. It is untenable to suggest that it is an error of law to effectively restate the well-accepted test for amendment in accordance with how the Court of Appeal has put it in one case rather than how it has put it in other cases. Notably, in their submissions to the Case Management Judge, the applicants themselves cited *Tait* and *Janssen*, without any suggestion that those cases misrepresented the law on amendments.

[28] In any event, I find no support in the Case Management Judge’s decision for the applicants’ assertion that the fact that he did not expressly quote the “should be allowed” language from *Canderel* “infuses” his application of the test to both the Section 15 Amendments and the Indirect Arms Exports Amendments. The Case Management Judge’s decision directly addressed the threshold issue and the interests of justice, which are central aspects of the *Canderel* test. This is in keeping with the *Canderel* test itself, which is that amendments should be allowed *provided* they meet the other requirements, including that they be in the interests of justice: *Canderel* at p 10; *Pomeroy* at para 4; see also *Sanofi-Aventis* at para 42. If amendments

are not in the interests of justice or do not yield a sustainable pleading, there is nothing in the *Canderel* test that says they should be allowed.

[29] I therefore reject the applicants' argument that the Case Management Judge applied the wrong test in assessing their motion to amend the notice of application.

B. *The Case Management Judge Did Not Err in Refusing the Section 15 Amendments*

(1) Nature of the amendments

[30] The proposed Section 15 Amendments seek to add a request for a declaration of a breach of section 15 of the *Charter* to the existing claim of a breach of section 7. The proposed amendments would add the following underlined language to paragraphs 1(d) and 33 of the applicants' draft amended notice of application for judicial review, which I present with some surrounding paragraphs to give context (the proposed amendments to paragraph 36 are part of the Indirect Arms Exports Amendments):

**1. THE APPLICATION IS FOR:**

[...]

- (d) A Declaration that the issuance of such permits places the Respondents in breach of Canada's obligations under section 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"); and under section 15 of the *Charter* with respect to discrimination on the basis of sex, age, race, national or ethnic origin, and physical or mental disability;

[...]

## 2. THE GROUNDS FOR THE APPLICATION ARE:

[...]

### *E. Canada's Legal Obligations to Control Arms Exports*

29. Canada has legal obligations, under both domestic and international law, to control its export of military goods or technology to countries engaged in violations of human rights.

[...]

33. Section 7 of the *Canadian Charter of Rights and Freedoms* protects the interests of “life, liberty and security of the person”. Section 15 of the *Charter* guarantees the right to equality without discrimination, including with respect to sex, age, race, national or ethnic origin, and mental or physical disability. The *Charter* is engaged when the federal government makes decisions to allow the transfer of military goods or technology to other states. Further, the *Charter* applies to actions of government authorities with extraterritorial reach.

[...]

36. Permits and other acts or regulations issued authorizing the brokering and export of Canadian military goods or technology destined for Israel on or after October 9, 2023 therefore puts Canada in breach of its domestic law obligations.

[31] As can be seen, the proposed amendment to paragraph 1(d) sets out a statement of the relief sought, namely a declaration that the permits at issue place the respondents in breach of Canada's obligations under section 15 of the *Charter* with respect to discrimination on the basis of sex, age, race, national or ethnic origin, and physical or mental disability. The proposed amendment to paragraph 33 simply paraphrases aspects of section 15 of the *Charter*, although by omitting “colour” and “religion” from the list of enumerated grounds of discrimination, the

applicants can be understood to identify the enumerated grounds of discrimination on which they rely.

(2) The Case Management Judge's decision

[32] The Case Management Judge concluded that the Section 15 Amendments failed on the threshold issue, as they did not disclose a reasonable cause of action meeting the requirements of Rule 301(e). After setting out the general requirements of Rule 301, as discussed in *JP Morgan*, the Case Management Judge discussed the requirements of a claim under section 15. As the Supreme Court of Canada summarized in *Sharma*, a claimant under section 15 must demonstrate that an impugned law or state action (a) creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and (b) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage: *R v Sharma*, 2022 SCC 39 at para 28.

[33] The Case Management Judge referred to the Federal Court of Appeal's decision in *Mancuso*, which directly addresses the pleadings requirements for a *Charter* claim in the context of a motion to strike: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227. At paragraph 21 of *Mancuso*, quoted by the Case Management Judge, Justice Rennie for the Court of Appeal underscored the importance of adequately pleading allegations of a *Charter* infringement:

There are no separate rules of pleadings for Charter cases. The requirement of material facts applies to pleadings of Charter infringement as it does to causes of action rooted in the common law. The Supreme Court of Canada has defined in the case law the substantive content of each Charter right, and a plaintiff must plead



sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, “rather, it is essential to the proper presentation of Charter issues”: *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357 at p. 361.

[Emphasis added.]

[34] In *Mancuso*, the Court of Appeal found that the statement of claim at issue did not meet this standard. With respect to an allegation of breach of section 15 in particular, Justice Rennie noted the importance of pleading the basis on which a claimant claims to have been discriminated against, and the facts that show how the impugned law or state action perpetuates disadvantage or prejudice rising to substantive discrimination: *Mancuso* at para 24, citing *Withler v Canada (Attorney General)*, 2011 SCC 12 at paras 30–31; see also *Brink* at paras 54–59.

[35] In this case, the Case Management Judge rejected the applicants’ assertion that the notice of application was “replete with allegations of fact that are on their face easily capable of supporting a claim under section 15,” noting that the only detail the applicants pointed to was the conduct of Israel alleged at paragraph 12 of the notice of application. He concluded the applicants had not “connected the dots in their proposed amendments as to how the conduct of Israel amounts to a violation of section 15 *Charter* rights, if at all.”

(3) The Case Management Judge did not make a palpable and overriding error

[36] As set out above, the Case Management Judge did not err in stating the test for amending a notice of application. In particular, he made no legal error in stating that an amendment must meet the threshold requirement of disclosing a reasonable cause of action meeting the

requirements of Rule 301(e). The applicants do not allege that he did. Rather, they allege that the Case Management Judge erred in his application of the law to the Section 15 Amendments. The palpable and overriding error standard therefore applies: *Brink* at para 41.

[37] The applicants argue their draft amended notice of application contains sufficient detail and material facts to support the section 15 claim. In particular, they refer to various allegations regarding the actions of Israel's political leadership, military leadership, and soldiers of the Israel Defense Forces ("IDF"), and tie these to enumerated section 15 grounds. They assert that it is at least arguable they will be able to establish a sufficient causal connection linking the conduct of Israel with Canada's *Charter* obligations.

[38] The difficulty with the applicants' argument is that it effectively asks the Court, and ultimately the respondents who are required to respond to the application, to attempt to decipher what the applicants' alleged section 15 claim is, rather than setting it out in the notice of application. A respondent must be able to understand and rely on the grounds for the application as set out in the notice of application. It is not open to an applicant to set out a bald allegation of *Charter* infringement and then try to better explain their case in further written submissions. As with particulars and affidavits, an applicant cannot rely on written submissions on an amendment motion to supplement or buttress an inadequate notice of application: *Mancuso* at para 20; *JP Morgan* at para 52; *Brink* at para 58.

[39] As the Case Management Judge observed, the notice of application contains allegations regarding the conduct of Israel and the IDF. It also contains allegations that Canada has approved

exports of military goods and technology to Israel, the two general assertions made in paragraph 33 regarding when the *Charter* is “engaged” and when it applies, and the general allegation in paragraph 36 that the permits put Canada in breach of its domestic law obligations. However, it does not set out the “legal bases and material facts” that would establish a breach of section 15 of the *Charter* by the respondents: *JP Morgan* at para 39; *Mancuso* at para 24; *Sharma* at para 28; *Withler* at paras 30–31.

[40] Contrary to the applicants’ submissions, the Case Management Judge’s finding is not one that requires the applicants to plead legal argument in the notice of application. The requirement in Rule 301 to set out “a complete and concise statement of the grounds intended to be argued” includes both the material facts *and* the legal bases for the relief sought in the notice of application: *JP Morgan* at para 39. The requirement for a complete and concise statement of the legal bases goes beyond simply quoting a section of the *Charter* and asserting that it is breached. It includes, for example, how Canada’s conduct is alleged to create a distinction and how it imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage: *Mancuso* at para 24; *Sharma* at para 28; *Brink* at para 112. The respondents should not be left trying to figure out for themselves the applicants’ allegations on these central issues.

[41] The applicants refer to a decision of the Ontario Court of Appeal, holding that “the fact that the allegations are bald is not, in itself, a basis for refusing leave” to amend a pleading: *Miguna v Ontario (Attorney General)*, 2005 CanLII 46385 (ON CA) at para 22. While I recognize that one decision of this Court has adopted *Miguna*, my reading of the Federal Court

of Appeal's jurisprudence is that the *Federal Courts Rules* do not permit the amendment of a pleading to make a bald allegation: *Millennium Funding, Inc v Bell Canada*, 2023 FC 764 at para 94. In particular, the Federal Court of Appeal has confirmed that bald allegations are liable to be struck, and that leave should not be granted to make an amendment that is liable to be struck: *JP Morgan* at para 42; *Mancuso* at paras 16–19, 27; *Brink* at paras 55–61, 72, 111–114; *Enercorp* at paras 22–24; *Teva* at paras 28–31.

[42] In this regard, *Enercorp* is particularly instructive. *Enercorp* sought leave to amend its statement of defence and counterclaim to add a ground of patent invalidity. An Associate Judge (then Prothonotary) found the proposed amendment was no more than a bald allegation, that it was therefore subject to being struck out under Rule 221(1), and that it therefore should not be allowed: *Enercorp* at paras 5–7. The Associate Judge went on to deny leave to amend the proposed amendments (effectively denying leave to reapply to amend the pleading) on the basis that *Enercorp* was unable to articulate the nature of such further amendments: *Enercorp* at paras 8, 25–26. Justice Pelletier for the Court of Appeal agreed with the Associate Judge that the proposed amendment was insufficient and should not be allowed because it failed to set out material facts: *Enercorp* at paras 29, 34–37. However, he found that leave should have been granted to reapply, since counsel's inability to state additional material facts at the hearing was insufficient to deny such leave: *Enercorp* at paras 29–30, 38, 44, 47–48. The Federal Court of Appeal in *Enercorp* thus expressly agreed that a proposed amendment that fails to meet the requirements of an adequate pleading should not be permitted.

[43] The approach taken by the Case Management Judge in this case is precisely that approved of by the Court of Appeal in *Enercorp*. The Case Management Judge found that the proposed amendments failed to adequately plead a section 15 *Charter* claim, but noted that this finding “does not preclude a further motion by the applicants for leave to amend the notice of application to assert a section 15 *Charter* violation.”

[44] As the Federal Court of Appeal recognized in *Brink*, an assessment of the sufficiency of a pleading is contextual and there is “no bright line between material facts and bald allegations”: *Brink* at para 57. Rather, it is the responsibility of the motions judge reviewing the pleadings as a whole to ensure they define the issues with sufficient precision to make pre-hearing proceedings manageable and fair: *Brink* at para 57; *Mancuso* at para 18; *McCain* at para 23; *Enercorp* at paras 34–37.

[45] Having reviewed the notice of application and the Case Management Judge’s reasons, I cannot conclude that he made a palpable and overriding error in concluding that the proposed amendments do not meet the threshold requirement that they disclose an adequately pleaded cause of action.

C. *The Indirect Arms Exports Amendments Should be Refused*

(1) Nature of the amendments

[46] The proposed Indirect Arms Exports Amendments relate broadly to the approval of exports of military to the United States that may subsequently be exported for use by Israel. In

particular, they would add to the notice of application challenges to paragraph 2(a) of the *Export Control List* and to *GEP No. 47*. The proposed amendments would add the following underlined language to paragraphs 1(h) and (k), 22–28, 35 and 36 of the draft amended notice of application for judicial review:

## 1. THE APPLICATION IS FOR:

[...]

- (h) An Order that the issuance of such permits, including, for greater clarity, General Export Permit No. 47 — Export of Arms Trade Treaty Items to the United States, SOR/2019-230, be quashed and that the Respondents immediately cease issuing all permits for the brokering and export of military goods or technology, including such items capable of being adapted for military use, to or ultimately destined for Israel, except with the express intention that they be subsequently transferred to a country other than Israel and never put to military or other active use in or by Israel, and cancel all such permits issued since October 9, 2023, or prior to that date but continuing in effect on or after October 9, 2023;

[...]

- k) A Declaration that section 2(a) of the Export Control List, SOR/89-202 is invalid and unlawful;

[...]

## 2. THE GROUNDS FOR THE APPLICATION ARE:

[...]

### ***D. Canada's Provision of Export Approvals Since October 9, 2023***

- 22. In addition to direct transfers of military goods or technology to Israel, such transfers can and do occur indirectly through third countries, notably the United States.
- 23. Section 2(a) of the Export Control List, SOR/89-202, exempts certain classes of military goods or technology

from export controls if intended for export to the United States.

24. General Permit No. 47 — Export of Arms Trade Treaty Items to the United States, SOR/2019-230, exempts further classes of military goods or technology from requiring an individual export permit to be exported from Canada to the United States.
25. Neither of these exemptions is subject to any fixed terms, mandatory periodic reviews, individual complaint mechanisms, or similar safeguards to ensure that they remain appropriate in changing circumstances.
26. The United States is by far the world's largest supplier of arms to Israel, accounting for roughly 70% of Israel's total arms imports.
27. Items of military goods or technology have in the past been exported from Canada to the United States and then onwards to Israel.
28. Since October 9, 2023, the United States has continued to supply military goods or technology to Israel without adequate controls in place to ensure that such items are not used to commit serious violations of international humanitarian law or international human rights law, or serious acts of gender-based violence or serious acts of violence against women and children.
- [...]
35. Canada's legal obligations to control arms exports apply to both indirect and direct exports.
36. Permits and other acts or regulations issued authorizing the brokering and export of Canadian military goods or technology destined for Israel on or after October 9, 2023 therefore puts Canada in breach of its domestic law obligations.

[47] The proposed Indirect Arms Exports Amendments would also add *GEP No. 47* as item g) on the applicants' list of authorities and rules relied on.

[48] The applicants cast the Indirect Arms Exports Amendments as simply adding “clarity and definition” to the notice of application. They contend that, as drafted, the notice of application is directed to the role of Canadian arms exports to Israel in facilitating human rights violations committed by Israeli forces, and that it is not limited to arms sent to Israel directly or to permits issued after October 9, 2023. They rely on references in the notice of application to the export of military goods or technology “to or ultimately destined for Israel,” and to the existing reference in paragraph 1(h) to “permits issued since October 9, 2023, or prior to that date but continuing in effect on or after October 9, 2023” [emphasis added].

[49] I agree with the respondents that the Case Management Judge made no palpable and overriding error in rejecting the applicants’ characterization of the Indirect Arms Exports Amendments as merely clarifying amendments. The notice of application as it presently stands is directly related to specific permits issued since October 9, 2023, for exporting or brokering military goods or technology destined for Israel. The following observation of Justice Rennie for the Federal Court of Appeal in *China Mobile Communications Group Co, Ltd v Canada (Attorney General)*, 2023 FCA 202 is apposite:

Although courts must gain a realistic appreciation of the application for judicial review’s essential character by reading it holistically and practically without fastening onto matters of form [...], this approach does not allow courts to read in elements of the application at the applicant’s urging where they do not exist on the face of the notice of application. The determination of what decision is challenged in an application for judicial review is a question so fundamental to the application that an applicant cannot call on the court’s generosity to achieve the broad interpretation of the application that they seek.

[Emphasis added; citation omitted; *China Mobile* at para 43.]



[50] As the Case Management Judge noted, the current notice of application makes no reference to the *Export Control List*, to *GEP No. 47*, or to the provisions of the *EIPA* under which they were issued, namely sections 3 and 7(1.1). Reference to the export of military goods and technology to the United States is “conspicuously absent” from the notice of application: *China Mobile* at para 46. The only fair reading of the existing notice of application is that it is directed to particular permits issued specifically to allow export of military goods and technology to Israel. It is not directed to general provisions of the *Export Control List* or to general permits that permit export of military goods and technology to the United States that might ultimately end up in Israel. Further, the single reference to permits issued prior to October 9, 2023, “but continuing in effect after October 9, 2023,” was made in the context of Israel-specific permits and not to general permits such as *GEP No. 47* that have been in place for years.

[51] That said, the fact that amendments add new subject matter to a notice of application is not the end of the inquiry. The issue is whether such amendments meet the threshold question and, if so, whether they meet the requirements of the *Canderel* test. The nature of the amendments is relevant to this assessment but does not determine it: *Merck* at para 33.

(2) The Case Management Judge’s decision

[52] The Case Management Judge set out the nature of the Indirect Arms Exports Amendments, the statutory context of the *Export Control List* and *GEP No. 47*, and his rejection of the applicants’ characterization of the amendments as merely clarifying. He concluded it was not in the interests of justice to permit the amendments to be included, finding the single most

significant factor to be the issue of delay of the expeditious resolution of the matter. He considered this factor alone to be sufficient reason not to permit the Indirect Arms Exports Amendments, noting that they would significantly expand the scope of the application, including the number of issues, the potential respondents, and the volume of materials, and would therefore delay the proceeding. The Case Management Judge also found that the amendments would not facilitate the Court's consideration of the true substance of the dispute on its merits. He considered the "true substance" of the application as drafted to be a challenge to the issuance of individual permits issued to five permit holders, and that adding new and different issues—the legality of a general permit and a provision of the *Export Control List*—would not facilitate the consideration of the existing issues.

[53] Given his conclusion on the interests of justice, the Case Management Judge did not address other arguments raised by the respondents, notably the threshold issue of whether the amendments had any prospect of success, and the requirements of Rule 302.

(3) The parties' arguments

[54] The applicants raise a number of challenges to the Case Management Judge's assessment of the interests of justice. In particular, they argue he erred by considering the issue of delay to the exclusion of other relevant factors, and by limiting his analysis of delay to the question of increased complexity, without considering the status of the proceeding at the time the amendments were proposed or the delay that would result from the alternative scenario in which the applicants brought their allegations with respect to exports to the United States in a separate application. They contend that failing to consider all relevant factors is an error of law, citing,

among other cases, *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161 at para 26 and *Janssen* at para 18. They also criticize the Case Management Judge’s conclusions regarding the increased complexity and delay of the proceeding, including his finding that the amendments would implicate a greater number of respondents, and his assessment of the “true substance” of the application.

[55] The respondents deny the Case Management Judge made any palpable and overriding errors or errors of law in his assessment of the interests of justice. They argue it was open to the Case Management Judge to rely on one factor as determinative in the particular circumstances of the case, noting that the requirement that all factors be assigned “their proper weight” does not foreclose the possibility that in a given case, one factor may be determinative: *Janssen* at para 18.

[56] These arguments raise interesting issues, particularly the extent to which each individual factor referred to *Continental Bank*, *Canderel*, and subsequent cases must be expressly considered and weighed in assessing whether a proposed amendment is in the interests of justice. However, I need not address the parties’ arguments with respect to these issues, as I conclude that the amendments should not be permitted on the basis of a different preliminary issue, namely the requirement in Rule 302 that an application for judicial review be limited to a single decision or order. This issue was raised before the Case Management Judge, who did not address it in light of his conclusions on the interests of justice. The respondents raise it again on this appeal, arguing that it forms another ground to uphold the decision of the Case Management Judge in respect of the Indirect Arms Exports Amendments. For the following reasons, I agree.

(4) The amendments are contrary to Rule 302 and leave should not be granted

(a) *Rule 302: general principles*

[57] As set out above, Rule 302 of the *Federal Courts Rules* provides that unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought. The rule reflects the policy of ensuring an expeditious and focused process for challenging a single decision or order: *Truehope* at para 5; *Badger v Sturgeon Lake Cree Nation*, 2002 FCT 130 at para 12.

[58] Despite this general policy, the Court may permit an application for judicial review to challenge two or more orders or decisions that constitute a “continuing course of conduct” where the decisions are linked by virtue of the statute, the decision-makers, the applicable legal questions, the timing of their issuance, or the commonality of facts or allegations and relief sought: *China Mobile* at para 47, citing *Key First Nation v Lavallee*, 2021 FCA 123; *Truehope* at para 6; *David Suzuki Foundation v Canada (Health)*, 2018 FC 380 [*Suzuki Foundation*] at paras 164–168, 173. The Court’s discretion to permit judicial review of multiple orders or decisions “should be exercised broadly, with a view to ensuring that the essential nature of the applicant’s grievance is brought before the court,” with the Court concerning itself with the substance of the issues, not the form they take: *China Mobile* at para 48.

[59] Also relevant to the discussion below are subsections 18.1(1) and (2) of the *Federal Courts Act*. Subsection 18.1(1) provides that judicial review may be made by anyone directly affected by “the matter” in respect of which relief is sought, while subsection 18.1(2) provides

that an application for judicial review in respect of a decision or order shall be made within 30 days. Based on the combined effect of these two subsections, the Federal Court of Appeal has recognized that the “matter” in respect of which an application for judicial review can be brought can be either a “decision or order” or a broader “matter” that is independent of any specific decision or order, such as an ongoing policy: *Key First Nation* at para 34, citing *Krause v Canada*, 1999 CanLII 9338 (FCA) at paras 20–23; *May v CBC/Radio Canada*, 2011 FCA 130 at para 10. The 30-day time limit on judicial review under subsection 18.1(2) only applies when the matter at issue is a decision or order: *Key First Nation* at para 36.

(b) *The decisions and/or matters at issue*

[60] In its current form, the applicants’ notice of application seeks judicial review in respect of the issuance of export and brokering permits for military goods and technology to Israel, as authorized by the Minister of Foreign Affairs at any time on or after October 9, 2023. The notice of application does not identify the particular permits it seeks to challenge, but effectively seeks judicial review of the issuance of all permits meeting this description.

[61] It is unclear whether the applicants challenge the issuance of the existing permits as a series of decisions by the Minister to issue the permits, or as a broader “matter” in the sense of an ongoing policy: *Federal Courts Act*, s 18.1(1). The applicants appear to consider the application to relate, at least in part, to the particular decisions to issue permits, given that they have requested production under Rule 317: *China Mobile* at paras 37–38, 42. In any event, the application as it currently exists challenges multiple export permits issued under subsection 7(1)

of the *EIPA* specifically to individual companies allowing for the export of military goods or technology to Israel.

[62] The respondents assert that 45 individual export permits are being challenged. Although the Case Management Judge did not accept this figure in the absence of evidence, he accepted that there are a number of permits issued to five entities that are being challenged. Regardless of the particular figure, the respondents have not opposed the inclusion of challenges to multiple permits in this single application pursuant to Rule 302 since, in the respondents' view, they "were issued pursuant to the same statutory authority for goods exported to the same country in the same time period." However, the respondents oppose the inclusion of the applicants' challenges to paragraph 2(a) of the *Export Control List* and *GEP No. 47* within the same application for judicial review.

[63] As noted at the outset, the *Export Control List* is established by the Governor in Council pursuant to section 3 of the *EIPA* and is promulgated by regulation. The *Export Control List* includes a schedule referring to various groups of goods and technologies, including military goods and technologies. The groups in the schedules refer in turn to various international agreements to which Canada is a signatory. The *Export Control List* also defines as the "Guide" a publication of the Department of Foreign Affairs, Trade and Development titled *A Guide to Canada's Export Control List*, which provides more detailed listings of various goods and technologies within the various groups set out in the schedule to the *Export Control List*.

[64] Through reference to the schedule and the Guide, paragraph 2(a) of the *Export Control List* defines a list of goods and technology that are subject to export control when “intended for export to any destination other than the United States.” The list includes military goods and technology described in various groups in the schedule. The “other than the United States” exception in paragraph 2(a) has been present since the *Export Control List* was first promulgated in 1989, although the list of items included in the paragraph has changed over time.

[65] Subsection 7(1.1) of the *EIPA* permits the Minister to issue general permits to all residents of Canada, permitting them to export or transfer any specified goods or technology included in the *Export Control List* to any country specified in the permit. *GEP No. 47* was promulgated as a regulation pursuant to subsection 7(1.1). It permits any resident of Canada to export certain categories of military goods on the *Export Control List* to the United States, while requiring certain reporting before and after such exports.

[66] As is clear from its full name (*General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States*), and the Regulatory Impact Assessment Statement [RIAS] issued at the time of its promulgation in 2019, *GEP No. 47* was issued in the context of Canada’s accession to the Arms Trade Treaty, a multilateral international agreement that came into force in 2014. The RIAS states that *GEP No. 47* was issued in light of debates relating to accession to the Arms Trade Treaty and consultations in respect of Canada’s export controls regime, and that sought to recognize both the interests of Canada’s defence industry in the permit-free movement of controlled items between Canada and the United States, and calls for increased transparency over the export of such items to the United States. Amendments were also made to the *EIPA* and

to the *Export Control List* in connection with the Arms Trade Treaty: *An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments)*, SC 2018, c 26; *Order Amending the Export Control List (Arms Trade Treaty)*, SOR/2019-223.

[67] The applicants appear to recognize that the promulgation of the *Export Control List* and the promulgation of *GEP No. 47* were different decisions or matters than the issuance of permits allowing the export of arms to Israel under subsection 7(1) of the *EIPA*. However, they argue that their challenges to these regulations relate to a “single continuous course of conduct” on the part of the respondents in allowing the transfer of military goods or technology to Israel.

(c) *It is not premature to determine the Rule 302 issue*

[68] As a preliminary point, the applicants claim it is premature to assess whether the matters raised in the Indirect Arms Exports Amendments are part of a continuing course of conduct that includes the permits currently challenged in the notice of application. They cite *Suzuki Foundation*, in which the Court declined to strike notices of application in two related applications for judicial review of a series of 79 registrations of pest-control products on the basis of Rule 302 and the 30-day limitation period in subsection 18.1(2) of the *Federal Courts Act*. The Court concluded it was “debatable” whether the applicants were properly seeking to challenge a continuous course of conduct, and therefore concluded it was a question that ought to be determined by the application judge: *Suzuki Foundation* at paras 203–204. The applicants argue that the same approach should be applied in this case.



[69] I disagree. There may certainly be contexts in which it is better to leave the determination of whether a notice of application contravenes Rule 302 to the application judge. There may be other contexts where it is appropriate or necessary to address the issue at a preliminary stage: *China Mobile* at paras 21, 30–32, 47–50; *Khadr v Canada (Minister of Foreign Affairs)*, 2004 FC 1145 at paras 6–12; *Mahmood v Canada*, 1998 CanLII 8450 (FC) at paras 1, 8–12; *Pfeiffer v Canada (Superintendent of Bankruptcy)*, 2004 FCA 192 at paras 27–28. The latter may include situations where a party opposes an amendment to a notice of application for judicial review on the basis that it would contravene Rule 302. This Court in *Truehope* and *Servier* decided the Rule 302 issue in just such circumstances: *Truehope* at paras 1, 18–19; *Servier* at paras 11–13, 19–20.

[70] In the present case, the record readily permits the Court to determine whether the decisions or matters at issue are part of a continuing course of conduct. In my view, it is not premature, and is indeed preferable, to address the question at this stage.

(d) *The challenged decisions are not part of a “continuing course of conduct”*

[71] The notion of a continuing or continuous course of conduct has been described in various ways in the jurisprudence. However, as noted above, common threads include the difficulty in pinpointing a single decision from which relief could be sought, and decisions that have the same factual situations, the same focus or legal issues, the same types of relief, the same decision-making bodies, and the same time frame: *Mahmood* at para 10; *Truehope* at paras 6–9; *Khadr* at para 10; *Canadian Assn of the Deaf v Canada*, 2006 FC 971 at paras 58–66; *Servier* at para 17;

*Suzuki Foundation* at paras 164–173. In *Suzuki Foundation*, Justice Kane reviewed the jurisprudence and summarized it as follows:

More than one decision may be reviewed in a single application – as an exception to Rule 302 – where it is a continuing act [...] or, as it was characterized in *Khadr*, a continuing cour[se] of conduct. The factors to consider in determining whether there is a continuing act or course of conduct include: whether the decisions are closely connected; whether there are similarities or differences in the fact situations, including, the type of relief sought, the legal issues raised, the basis of the decision and decision-making bodies; whether it is difficult to pinpoint a single decision; and, based on the similarities and differences, whether separate reviews would be a waste of time and effort [...].

[Emphasis added; citations omitted; *Suzuki Foundation* at para 173.]

[72] Applying the foregoing approach, I conclude that the establishment of paragraph 2(a) of the *Export Control List* and/or the issuance of *GEP No. 47* were not part of a continuing course of conduct that included the permits currently at issue in this proceeding, namely those issued to the five corporate respondents allowing the export of military goods or technology to Israel after October 9, 2023.

[73] As noted above, paragraph 2(a) of the *Export Control List*, which is established under section 3 of the *EIPA*, subjects certain items to export control when exported to any destination other than the United States. Although amended from time to time, paragraph 2(a) has been part of the *Export Control List* since it was established in 1989, decades before the attacks of October 2023, the subsequent actions by Israel in Gaza alleged in the notice of application, and the permits issued under subsection 7(1) of the *EIPA* currently at issue.

[74] *GEP No. 47* was issued by the Minister of Foreign Affairs in 2019 as a general permit issued pursuant to subsection 7(1.1) of the *EIPA*, in connection with Canada's accession to the Arms Trade Treaty. Again, it was issued years before the specific permits currently at issue in the application, and in a different factual and legal context.

[75] Neither the establishment of paragraph 2(a) of the *Export Control List* nor the issuance of *GEP No. 47* are decisions that are "closely connected" to the issuance of permits in 2023 or subsequently. They do not have the same focus and they were not promulgated in the same factual or legal context. Nor does their existence create any difficulty in "pinpointing a single decision from which relief could be sought." While the permits currently at issue were issued by the same decision maker as *GEP No. 47* (and, arguably, paragraph 2(a) of the *Export Control List*, since the Governor in Council acts on the advice of the Minister of Foreign Affairs), I do not consider this creates a particularly close connection in the context of the other issues.

[76] Having been issued pursuant to different statutory provisions in different factual circumstances, the applicants' challenges to paragraph 2(a) of the *Export Control List* and *GEP No. 47* raise a number of different legal issues. As the respondents point out, sections 7.3 and 7.4 of the *EIPA*, which the applicants rely on in their challenges to the permits currently at issue, do not apply to either the establishment of the *Export Control List* or to permits issued under subsection 7(1.1) such as *GEP No. 47*. Allegations of *Charter* breach would be a common issue, but at least certain aspects of such allegations, including issues surrounding causal connection, would be different. In this regard, I disagree with the applicants that simply listing

the various aspects of the section 7 (and section 15) analysis in minute detail means that the proceedings would raise of “multitude” of identical legal questions.

[77] The applicants argue that the *Export Control List* and the various sorts of permits that may be issued under the *EIPA* are simply elements of the same interwoven regime regulating military exports from Canada, with the elements designed to function together as a whole. While there is truth in this statement at the broad and general level that the applicants make it, it does not mean that every matter raised under the *EIPA*, every matter relating to military exports under the *EIPA*, or even every matter relating to military exports of goods or technology that may end up in Israel, is all part of a “continuing course of conduct.”

[78] Nor do I consider that simply defining the issue as “allowing the transfer of military goods or technology to Israel” renders the various matters or decisions part of an ongoing course of conduct. Indeed, the issue raised by paragraph 2(a) of the *Export Control List* and *GEP No. 47* can perhaps be better described as “continuing to allow the transfer of military goods or technology to the United States, without ensuring such military goods or technology are not subsequently transferred to Israel.” While the two issues raise similar concerns for the applicants—the ultimate use of Canadian military exports by Israel—the differences between them show that they are not readily described as a continuing course of conduct.

[79] This then brings the analysis to the logistical considerations raised in the jurisprudence: the question of overlapping factual or evidentiary records and legal arguments, and whether based on the similarities and differences, separate reviews would be a waste of time and effort.

[80] I agree with the applicants that there will necessarily be some overlap in aspects of the current application and one or more separate reviews of paragraph 2(a) of the *Export Control List* and *GEP No. 47*. In particular, fact evidence relating to the applicants' allegations that Israel's conduct in its military campaign in Gaza since October 9, 2023, has violated international human rights law and international humanitarian law, will likely be the same, although elements pertaining to the use and source of Canadian military goods and technology is likely to be different depending on whether those goods and technology are exported directly to Israel or are exported to the United States and end up in Israel.

[81] Conversely, though, evidence regarding the factual context in which the matters arose or the decisions were taken, and the records before the decision-maker at the time the decisions were taken, will almost certainly be considerably different as it relates to paragraph 2(a) of the *Export Control List* and *GEP No. 47*. A single common record on this application for judicial review could lead to a confounding conflation of those records. Avoiding such conflation is, in my view, one of the goals and advantages of Rule 302.

[82] There is also the concern, raised by the Case Management Judge in considering the interests of justice, regarding the number and identity of those directly affected by the applicants' challenge to paragraph 2(a) of the *Export Control List* and/or *GEP No. 47*. Addressing the matters together could result in non-government respondents being involved in a proceeding that raises a variety of issues that do not concern them, in addition to those that do. While the convenience and cost to the applicants of a single or multiple applications is to be considered, the cost to such respondents is also a relevant factor.

[83] While separate applications for judicial review might require evidence and argument regarding certain of the foregoing issues to be raised in two proceedings, this does not necessarily mean that all aspects of the proceedings must be entirely duplicated. All parties are represented by experienced counsel, who will be able to work together to minimize unnecessary duplication and wasted time and effort, particularly with the assistance of case management.

[84] Finally, as the applicants note, their motion for an amendment was brought fairly early in the process of this application. However, in my view, this is of limited relevance in addressing Rule 302, since (a) it has no impact on whether the decisions being challenged are part of a continuing course of conduct; and (b) Rule 302 applies even where there is no issue of the timeliness of an amendment, such as where a notice of application challenges multiple decisions from the outset.

[85] I conclude the Indirect Arms Exports Amendments raise additional matters or decisions that do not constitute a continuing course of conduct with the matters or decisions currently at issue in the proceeding. Recognizing the broad discretion of the Court, and considering the relevant factors and circumstances, I conclude leave should not be granted pursuant to Rule 302 to make the Indirect Arms Exports Amendments and thereby further expand the within application to a greater number of orders or decisions in respect of which relief is sought.

#### IV. Conclusion

[86] For the foregoing reasons, I conclude that (1) the Case Management Judge did not err in setting out the applicable legal test with respect to the amendment of a notice of application for judicial review; (2) the Case Management Judge did not make a palpable and overriding error in

refusing the Section 15 Amendments because they did not disclose an adequately pleaded cause of action; and (3) the Indirect Arms Exports Amendments should not be permitted under Rule 302. The applicants' appeal is therefore dismissed.

[87] Both parties sought their costs of the motion. I will award costs of the appeal motion to the government respondents as the successful party. However, in the circumstances and given the nature of the underlying application, I would award those costs to the respondents in the cause, *i.e.*, costs of the motion will be to the respondents if they are successful in the cause, but no costs of the motion will be recoverable by either party if the applicants are successful in the cause.

**ORDER IN T-473-24**

**THIS COURT ORDERS that**

1. The applicants' appeal motion is dismissed, with costs to the government respondents in the cause.

\_\_\_\_\_  
"Nicholas McHaffie"

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-473-24

**STYLE OF CAUSE:** HAMMAM FARAH ET AL v MINISTER OF  
FOREIGN AFFAIRS ET AL

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO  
RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** MCHAFFIE J.

**DATED:** APRIL 11, 2025

**WRITTEN REPRESENTATIONS BY:**

Barbara Jackman  
James Yap  
Veromi Arsiradam

FOR THE APPLICANTS

Andrea Bourke  
Margaret Cormack

FOR THE RESPONDENTS, MINISTER OF  
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