



# Justice Centre for Constitutional Freedoms

July 2, 2020

VIA FACSIMILE and EMAIL

Honourable Marco E. L. Mendicino  
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Dear Minister,

**RE: Refusal to Accept Passport Renewal Application – Shelley Baker, Passport No. [REDACTED]**

We are counsel for Shelley Baker. We write further to Ms. Baker's thwarted attempt to renew her passport, and to insist, for the reasons detailed below, that her passport renewal application be immediately accepted and processed. We further demand that Immigration, Refugees and Citizenship Canada (IRCC) resume fulfilling its constitutional obligations to process all other passport applications in a timely manner.

Since March 19, 2020 numerous Canadians have attempted to renew their passports only to be told that, unless their application is deemed "urgent" by IRCC, it will be not be accepted for processing. Ms. Baker attempted to renew her passport in May, as it had expired on March 26. When she discovered that all processing offices had been closed to the public, she called IRCC. She was advised by IRCC that only "urgent" passport applications were currently being accepted. Ms. Baker explained why her situation was "urgent", but her request to have her passport renewal application accepted was denied without reasons.

The refusal to receive and process Ms. Baker's passport renewal application infringes her constitutional rights as protected by the *Canadian Charter of Rights and Freedoms* (the "Charter"). Further, Ms. Baker should not have been required to divulge personal details about her circumstances and travel intentions to the government as a condition of obtaining a renewal of her passport. A process that arbitrarily and subjectively deems some passport requests as urgent and deserving of processing, and others as insufficiently urgent and put on hold indefinitely, is unlawful.

Section 6(1) of the *Charter* protects mobility rights and provides that "[e]very citizen of Canada has the right to enter, remain in, and leave Canada". The refusal to process a passport renewal application is an infringement of this constitutional right.<sup>1</sup> The issuance of a passport is not a privilege to be

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<sup>1</sup> *Kamel v Canada (Attorney General)*, 2009 FCA 21; *Abdelrazik v. Canada (Minister of Foreign Affairs)*, 2009 FC 580 at para 151.

bestowed on citizens by government. Rather, it is a necessity for travel in and out of the country.<sup>2</sup> “The right to leave Canada is a hollow right if it cannot be exercised in a meaningful way due to the actions of the Canadian government directed against an individual or group of individual citizens.”<sup>3</sup> As the Federal Court of Appeal has noted:

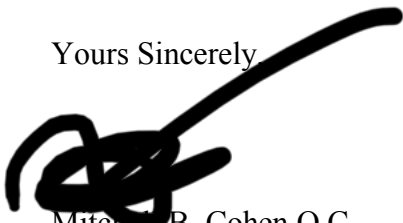
To determine that the refusal to issue a passport to a Canadian citizen does not infringe that citizen's right to enter or leave Canada would be to interpret the Charter in an unreal world. ... The fact that there is almost nowhere a Canadian citizen can go without a passport and that there is almost nowhere from which he or she can re-enter Canada without a passport are, on their face, restrictions on a Canadian citizen's right to enter or leave Canada[.]<sup>4</sup>

There is no justification for the *Charter* rights infringement resulting from IRCC’s refusal to accept Ms. Baker’s passport renewal application.<sup>5</sup> Nothing regarding the declared pandemic involving COVID-19 in any way justifies the refusal to accept for processing from citizens passport renewal applications. A policy of refusing to accept all passport applications that do not meet an arbitrary and vague test of urgency is unconstitutional.

We demand Ms. Baker’s passport renewal application be immediately accepted for processing. We further insist IRCC cease its unconstitutional practice of only accepting “urgent” passport applications and adhere to its *Charter* obligations to uphold Canadians’ mobility rights by processing all passport applications in a timely and procedurally fair manner.

In the absence of a reply to this letter on or before Friday, July 10, 2020, further legal action will be taken.

Yours Sincerely



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*"Defending the constitutional freedoms of Canadians"*

c.c. The Honourable Rob Moore, Member of Parliament for Fundy Royal

Enclosure

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<sup>2</sup> *Khadr v. Canada (Attorney General)*, 2006 FC 727 at para 62, citing the Ontario Court of Appeal in *Black v. Canada (Prime Minister)*, [2001] O.J. No. 1853 at para 54.

<sup>3</sup> *Khadr* at para 63.

<sup>4</sup> *Kamel* at para 15.

<sup>5</sup> The onus is on IRCC to demonstrate that the rights infringement resulting from a refusal to renew a passport is justified under section 1 of the *Charter*. See *Abdelrazik* at para 55.