



Court File No.: T-831-20

FEDERAL COURT

SHELLEY BAKER, SONIA FAYE, and DIANE SMITH

Applicants

- and -

CANADA (MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA,
and THE ATTORNEY GENERAL OF CANADA)

Respondents

APPLICATION UNDER Sections 18(1) and 18.1 of the *Federal Courts Act* and Rule 300(a) of
the *Federal Courts Rules*.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by
the Applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the
Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested
by the Applicants. The Applicants request that this application be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the
application or to be served with any documents in the application, you or a solicitor acting for you
must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve
it on the Applicants' solicitor WITHIN 10 DAYS after being served with this Notice of
Application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other
necessary information may be obtained on request to the Administrator of this Court at Ottawa
(telephone 613-992-4238) or at any local office.

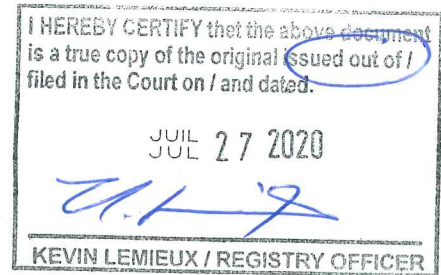
IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN
YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: July 27, 2020

**ORIGINAL SIGNED BY
KEVIN LEMIEUX
A SIGNÉL'ORIGINAL**

Issued by: _____
(Registry Officer)

Address of local office: Canadian Occidental Tower
635 Eighth Avenue SW, 3rd floor
Calgary, Alberta T2P 3M3



**TO: THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA**

Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1
Fax: 613-952-5533

AND TO: THE ATTORNEY GENERAL OF CANADA

Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

Prairie Regional Office - Calgary
Department of Justice Canada
Suite 601, 606 4th Street SW
Calgary, Alberta T2P 1T1
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APPLICATION

1. This is an Application for Judicial Review pursuant to sections 18(1) and 18.1 of the *Federal Courts Act* in respect of a decision of the Respondent, the Minister of Immigration, Refugees and Citizenship Canada (the “Minister”), or his delegates, as the case may be, refusing to accept or process passport applications unless determined by the Minister’s delegates to be in connection with “valid urgent travel reasons”, hereinafter referred to as the “Decision”.

THE APPLICANTS MAKE THIS APPLICATION FOR:

2. The Applicants seek the following relief:
 - a. An interlocutory injunction in the nature of *mandamus* pursuant to section 18(1) and 18.2 of the *Federal Courts Act* and section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “Charter”) directing the Minister to resume accepting and processing all passport applications, both in-person and mail-in applications, in accordance with standard timelines, and to confirm the commencement of same in writing;
 - b. A Declaration pursuant to section 24(1) of the *Charter* that the Decision is unreasonable because it does not proportionately balance mobility rights as protected by section 6(1) of the *Charter* with any relevant statutory objective;
 - c. An Order pursuant to sections 18(1) of the *Federal Courts Act* and section 24(1) of the *Charter* in the nature of *certiorari* quashing the Decision;
 - d. An Order pursuant to sections 18(1) of the *Federal Courts Act* and section 24(1) of the *Charter* in the nature of *mandamus* directing the Minister to resume accepting and processing all passport applications, both in-person and mail-in applications, in accordance with standard timelines, and to confirm the commencement of same in writing;
 - e. Costs; and

- f. Such further and other relief as counsel may advise and this Honourable Court considers just.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

3. The Applicant, Shelley Baker is a resident of New Brunswick. Her passport expired in March, 2020. Ms. Baker intends and desires to exercise her *Charter* right to leave the country to be with members of her immediate family in the United States, but is unable to do so because the Minister, through his delegates, refuses to accept and process her passport renewal application.
4. The Applicant, Sonia Faye is a resident of Ontario. She is unable to exercise her *Charter* right to leave the country because she cannot obtain a new passport. She attempted to submit a new passport application but was told by the Minister's delegates that because her application is not "urgent", it will not be accepted for processing.
5. The Applicant, Diane Smith is a resident of Alberta. Her passport expired May 7, 2020. She attempted to renew her passport so that she could exercise her *Charter* right to leave Canada but has been unable to do so because her passport renewal application will not be accepted by the Minister's delegates.
6. The refusal of the Minister and his delegates to process passport applications unlawfully confines the Applicants to Canada in breach of their constitutional right pursuant to section 6(1) of the *Charter*.
7. The Respondent, the Minister is responsible for exercising Canada's royal prerogative regarding passports and making all decisions to issue or deny a passport or to refuse to accept or process a passport application. The Minister's delegates perform this function through the Passport Program. Employment and Social Development Canada, through Service Canada, is responsible for the delivery of the Passport Program on behalf of the Minister. Service Canada provides in-person passport services in Passport Offices and at Service Canada Centres, including receiving and processing passport applications.

The Denial of Passport Services

8. There are two ways a Canadian citizen can apply for a passport: in person at a Passport Office or at a Service Canada Centre, or by mail. The standard processing times for an in-person application at a Passport Office is 10 business days, 20 business days at a Service Canada Centre, and 20 days by a mail application, not including mailing time.
9. On March 19, 2020, all Service Canada Centres and Passport Offices closed, thereby eliminating the possibility of in-person passport applications. Normal passport processing also ceased as of this date. Following March 19, and contrary to law, the Passport Program adopted an *ad hoc* process of only accepting and only processing passport applications if those applications were considered to be for “valid urgent travel reasons”.
10. Canadian citizens intending to leave the country, and seeking the passport they need to do so, must now demonstrate that they have one of the following “valid urgent travel reasons”:
 - i. For a medical reason because [they] have a serious illness;
 - ii. Because of the serious illness or death of someone [they] have a relationship with;
 - iii. Because [they’ll] have financial problems from the loss of a job or business;
 - iv. To support an essential service;
 - v. For humanitarian reasons
11. The Applicants attempted to submit in-person passport applications after March 19. Upon discovering that all Service Canada Centres and Passport Offices were closed, all three contacted the Passport Program by phone. The Applicants were told by Passport Program staff that only “urgent” passport applications were currently being accepted and processed, and that if they do not “have a valid reason to travel urgently”, they must wait until normal processing services resume for their passport application to be accepted and processed. No timeline has been provided for the resumption of normal processing.
12. When the Applicants inquired about the process for having their passport application deemed “urgent” so that it would be accepted, they were told they could submit an online form or make a request orally over the phone. If Passport Program staff determined there was a “valid urgent travel reason”, Passport Program staff would phone to arrange a time

that the Applicants could attend at one of the closed offices to complete their passport application.

13. The Applicant, Ms. Baker has health and financial struggles and lives with her daughter out of necessity. She made an oral phone request to have her reasons for travelling out of the country deemed “valid urgent”. She explained to Passport Program staff that she needed to travel to the United States to be with her son, both for her sake and to support her son, who has PTSD due to his service in the United States Armed Forces. She was denied.
14. The Applicant, Ms. Faye called the Passport Program in early July to inquire about passport applications and complained in response to being told that only “urgent” applications were being accepted. She submitted the online form, requesting that her new passport application be accepted and processed, even though she was not intending to travel for any of the “valid urgent” reasons listed in paragraph 9.
15. On July 10, Ms. Faye received a call back from Passport Program staff regarding the online form she submitted. She was told that she should not travel and, at one point in the call was instructed that she is to “remain in Canada”. Ms. Faye asked for confirmation that she was being denied passport services and the Passport Program staff confirmed same.
16. On July 14, Ms. Faye received a letter from Passport Program Client Services in response to her earlier complaint. The letter stated, in part:

Please note that passport services at all Service Canada offices are suspended. All pending requests, such as passport mail-outs with or without a tracking number, will be processed when services resume.

In the meantime, should you need to travel urgently, I suggest you fill out the Service Canada e-form... or contact the Passport Call Centre[.]

17. On July 2, 2020, counsel for the Applicant, Ms. Baker sent a letter to the Minister requesting that Ms. Baker’s passport renewal application be accepted and processed, and further, that the Minister adhere to his *Charter* obligations by resuming to accept and process all passport applications in a timely manner. No response to the letter was received.

18. Due to the refusal to accept and process their passport applications, the Applicants are unable to exercise their right to leave Canada because a passport is required to travel by air to leave the country.

The Minister's Decision is Unlawful

19. 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 accept and process a passport application in a timely manner impairs this constitutional right. The issuance of a passport is not a privilege to be bestowed on citizens by government when it is convenient. Rather, it is a necessity for travel in and out of the country. The right to leave Canada is a hollow right if it cannot be exercised in a meaningful or timely way because of the prolonged refusal by government bureaucrats to accept and process passport applications. The rights protected by section 6(1) of the *Charter* are rights shared equally by all Canadian citizens, regardless of whether the reasons they want to travel are considered more “essential” than others’, or otherwise considered more “valid” by government.

20. The Decision is unreasonable and unlawful. It does not proportionately balance the *Charter* right to leave Canada with any relevant statutory objective. International flights have long resumed following the advent of COVID-19, and the volume of air travel continues to increase back to normal levels. Most countries are accepting travelers, as government measures taken in reaction to COVID-19 are rolled back around the world. There is no lawful reason to continue to refuse acceptance and processing of passport applications.

21. There is no statutory objective achieved by continuing to refuse acceptance of passport applications that are not deemed “urgent” enough, and to only process passport applications that are arbitrarily considered to be for “valid urgent travel reasons”. The Minister is not authorized by any provision of the *Passport Order*, SI/81-86 or other applicable legislation to make the Decision.

22. Any statutory objective the Minister could potentially rely on for the continuance of this situation is not proportionately balanced against the continued effective deprivation of the right to leave Canada. The *Charter* right to leave the country protects the right of Canadian citizens to have their passport applications accepted for processing within a reasonable time and regardless of their reasons to travel or when they want to travel. Four months and counting is not a reasonable time.
23. The Minister is obligated by section 6(1) of the *Charter* to immediately resume acceptance and processing of all passport applications. The Minister is precluded by the Constitution from effectively shutting down, for any significant length of time, the system by which citizens obtain a regular passport within a standard time, which represents the bulk of passport applications. The inconveniences resulting from public health restrictions regarding COVID-19 does not excuse the failure of the Minister to adhere to his *Charter* obligations. A mere lack of resources does not justify *Charter* limitations.
24. The adoption of the new practice of only accepting passport applications that are considered to be for “valid urgent travel reasons”, and the arbitrary process used to determine whether a passport application is “urgent”, does not satisfy the Minister’s *Charter* obligations.
25. The new process lacks any of the protections that would ensure it is implemented by the Minister’s delegates in a procedurally fair manner. There is no transparency or accountability. There is no appeal process. Decisions are made without any attempt to balance the *Charter* right to leave the country. It is unclear how assessments are conducted and how consistency is achieved. There is no list of what are “essential services” or what it means to “support” an essential service. No definitions are known for what a “relationship” is, what counts as an “illness”, or what makes an illness sufficiently “serious”. Despite Ms. Baker’s reasons for travel being based on the illnesses that her and her son have, her request for her passport application to be accepted was denied.
26. By requiring passport applicants to explain their reasons for travel, the process requires the disclosure of personal details that are irrelevant to the determination to issue a passport. Government has no role in requiring Canadians to disclose details about why they want to

travel as a precondition for having their passport application processed, and has no place in deeming the travel of some Canadians to not be “valid” or “urgent” enough to warrant the issuance of a passport. To each person, their reasons for travelling are entirely “valid” and necessarily “urgent” from their subjective viewpoint. Such government intrusion into the personal affairs of citizens and the degree of exerted state control over the private lives of citizens is alien to a free and democratic nation.

The Applicants rely on the following:

27. Part I of the *Constitution Act, 1982: Canadian Charter of Rights and Freedoms*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;
28. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.
29. *Federal Courts Rules*, SOR/98-106.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:


30. The Affidavits of Shelley Baker, Sonia Faye and Diane Smith, to be sworn and filed;
31. The record before the Minister or his delegates; and
32. Such further and other affidavits and material as counsel may advise and this Honourable Court permit.

Pursuant to Rule 317 of the Federal Courts Rules, the Applicants request that the Minister send a certified copy of the following material, that is not in the possession of the Applicants, but is in the possession of the Minister, to the Applicants and to the Registry:

33. The record of all documents and other materials before the Minister and his delegates informing the Decision;
34. The record of all documents and other materials in the possession or control of the Minister regarding the Decision to refuse to accept and process the passport applications of the Applicants, Shelley Baker, Sonia Faye and Diane Smith; and

35. Such further and other material that may be in the possession, power or control of the Minister and which may be relevant to these proceedings.

Dated at Calgary this 27th Day of July, 2020



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