



Justice Centre

for Constitutional Freedoms

September 15, 2020

VIA FAX & EMAIL

The Right Honourable Justin Trudeau
Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2
P: 613-941-4211
F: 613-941-6900
E: pm@pm.gc.ca

Dear Prime Minister,

**RE: Demand Letter Regarding the Federal Quarantine Requirement Imposed on
Canadians Returning from International Travel**

We are writing to express our concerns and to see thoughtful and appropriate action by government in regard to the continued mandatory quarantine imposed on Canadians returning from international travel. The current requirement that all Canadians re-entering the country must quarantine for 14 days, regardless of symptoms or COVID-19 test results, is arbitrary and an overreach of government authority. A significant contraction in the severity of the Orders issued pursuant to the *Quarantine Act* is justified and appropriate.

The Federal Cabinet issued *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation)*, No. 4,¹ on August 30, 2020.² This Order in Council, issued pursuant to section 58(1) of the *Quarantine Act*,³ mandates that any Canadian re-entering the country must enter into 14-day quarantine regardless of whether they are symptomatic or have tested positive for COVID-19. The Order does not distinguish between symptomatic and asymptomatic individuals, nor provides for any exceptions whatsoever, such as even walking alone outside.

The *Canadian Charter of Rights and Freedoms* constitutionalizes individual rights and freedoms, such as the right to liberty, mobility and privacy. One of the primary purposes of the *Charter* is

¹ P.C. 2020-589, in effect until September 30, 2020.

² Replacing *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation)*, No. 3, P.C. 2020-524 issued on June 29, 2020.

³ S.C. 2005, c. 20.

to protect Canadians from being restrained in their choices by government and from being coerced by government to make choices they do not want to.⁴ All government orders, including emergency orders, must comply with the *Charter* by not infringing any of the rights protected thereunder, **unless doing so can be justified in a free and democratic society.**

Quarantine is the functional equivalent of house arrest. State-compelled confinement to a person's residence is a very serious interference with personal autonomy. Section 7 of the *Charter* protects individual liberty, including the right to be free of state interference with physical movement. Quarantining of all citizens re-entering Canada, disregarding test results and symptoms of COVID-19, impairs liberty in a manner that is arbitrary, disproportionate and overbroad, and therefore violates the principles of fundamental justice.

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”. As the Supreme Court has ruled, “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.”⁵ Arbitrarily penalizing all Canadians that exercise their right to leave and re-enter the country by imposing a mandatory 14-day quarantine represents a severe impairment of section 6(1).

The mandatory quarantining of all asymptomatic Canadians merely because of international travel is not rationally connected to any legitimate public health objective. It is not rational to impose a 14-day quarantine upon asymptomatic individuals that are able to provide test results indicating their lack of infection.

Reasonable alternatives exist that will satisfy public health objectives. It is not necessary or reasonable to impose a 14-day quarantine upon asymptomatic individuals. Tests that can produce results within hours or days are now widely available and are being used in Europe and elsewhere.⁶ It is not justifiable to demand the quarantine of asymptomatic persons without permitting them to undergo a test that may produce a negative result for COVID-19.

Canadian airlines are facing massive economic losses as a result of the universal quarantine order. The industry, which is critical to the Canadian economy, is facing collapse. The employment of thousands, both within airlines and in supporting businesses, is in permanent jeopardy. The government's measures are severely impacting the constitutionally-protected right to earn a living.

Significant public health and law enforcement resources are unnecessarily being consumed to continue to administer and enforce the quarantine of healthy Canadians. The economic consequences of prolonging extreme disincentives to international travel is painfully obvious. In

⁴ *R v Big M Drug Mart Ltd*, [1985] 1 S.C.R. 295 at para 95.

⁵ *Khadr* at para 63.

⁶ <https://www.news-medical.net/news/20200629/NUS-researchers-develop-portable-COVID-19-micro-PCR-diagnostic-system.aspx>; <https://www.forbes.com/sites/tamarathiessen/2020/07/27/covid-19-airport-testing-us-europe-what-to-expect/#7c72eff42832>

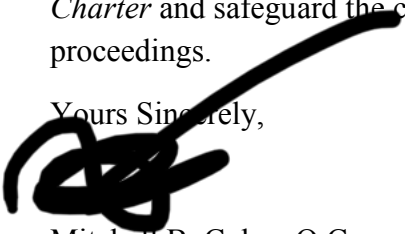
addition to egregious interference with the constitutional rights and daily lives of Canadians, the Canadian Government's overbroad quarantine regime is costly and harmful to livelihoods. Continued government overreach risks a civil liberties and economic crisis that will be both government-created and more severe than the public health crisis brought on by COVID-19.

Orders issued under the *Quarantine Act* regarding Canadians returning from international travel should rationally only apply to individuals who have tested positive for COVID-19, or are symptomatic and decline a COVID-19 test. Asymptomatic citizens and symptomatic Canadians who have tested negative should no longer be arbitrarily quarantined upon exercising their *Charter*-protected right to enter Canada. Other western democracies have provided clear functional examples of providing optional testing for international arrivals, effectively reducing the necessity of quarantine to a miniscule number.

Canadians deserve their government to consider the clear and safe alternatives to its current arbitrary dictates of effective house arrest for all citizens returning from international travel.

If further orders issued pursuant to section 58(1) of the *Quarantine Act* do not comply with the *Charter* and safeguard the constitutional rights of Canadians, we intend to commence court proceedings.

Yours Sincerely,



Mitchell B. Cohen Q.C.

Justice Centre for Constitutional Freedoms

Tel: 403-475-3622

Fax: 587-352-3233

Email: mcohen@jccf.ca

"Defending the constitutional freedoms of Canadians"

c.c.: Deputy Prime Minister - The Honourable Chrystia Freeland
Minister of Health of Canada - The Honourable Patty Hajdu
Attorney General of Canada - The Honourable David Lametti

Premiere of Alberta - The Honourable Jason Kenney
Minister of Health of Alberta - The Honourable Tyler Shandro
Alberta Minister of Justice and Solicitor General - The Honourable Kaycee Madu
Alberta Chief Medical Officer of Health - Dr. Deena Hinshaw