



# Justice Centre

for Constitutional Freedoms

September 22, 2021

VIA EMAIL

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Premier Ford, Minister Elliott, and Dr. Moore:

The Justice Centre for Constitutional Freedoms ("JCCF") is writing to express our deep concerns about the constitutionality of the new "vaccine passport" laws, and demand they be rescinded. On September 14, 2021, the Government of Ontario filed an amended regulation to the *Reopening Ontario Act, 2020* that requires Ontarians to provide proof of two doses of the COVID-19 vaccination to access certain public settings and facilities.<sup>1</sup> The Ontario Office of the Premier issued a news release indicating that this new mandate will soon include a requirement to show proof of a vaccine certificate, using a government verification app,<sup>2</sup> i.e., a vaccine passport. The JCCF has reviewed the new regulations and is deeply troubled over the impact they will have on the rights of Canadians.

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<sup>1</sup> *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17*, ONTARIO REGULATION 645/21, Schedule 1 to Ontario Regulation 364/20, section 2(1)

<sup>2</sup> Ontario to Require Proof of Vaccination in Select Settings Province to launch enhanced vaccine certificate and verification app to stop the spread of COVID-19 **September 01, 2021** [Office of the Premier](https://news.ontario.ca/en/release/1000779/ontario-to-require-proof-of-vaccination-in-select-settings) retrieved from: <https://news.ontario.ca/en/release/1000779/ontario-to-require-proof-of-vaccination-in-select-settings>



# Justice Centre

## for Constitutional Freedoms

The new provisions are encapsulated and summarized in the government's news release:

As of September 22, 2021, Ontarians will need to be fully vaccinated (two doses plus 14 days) and provide their proof of vaccination along with photo ID to access certain public settings and facilities. This approach focuses on higher-risk indoor public settings where face coverings cannot always be worn and includes:

- Restaurants and bars (excluding outdoor patios, as well as delivery and takeout);
- Nightclubs (including outdoor areas of the establishment);
- Meeting and event spaces, such as banquet halls and conference/convention centres;
- Facilities used for sports and fitness activities and personal fitness training, such as gyms, fitness and recreational facilities with the exception of youth recreational sport;
- Sporting events;
- Casinos, bingo halls and gaming establishments;
- Concerts, music festivals, theatres and cinemas;
- Strip clubs, bathhouses and sex clubs;
- Racing venues (e.g., horse racing).<sup>3</sup>

Ontarians will be required to show their vaccine receipt when entering designated settings along with another piece of photo identification, such as a driver's licence or health card.<sup>4</sup> As of October 22<sup>nd</sup> Ontario will also introduce an enhanced digital vaccine receipt that features a QR code.<sup>5</sup>

Vaccine passports are lauded as an effective tool to prevent spread of COVID-19 and keep Ontarians safe, disregarding the dearth of evidence suggesting current vaccines do not prevent individuals from catching or transmitting the virus. Further, no provision is made in the new law for the existence of natural immunity among those with prior exposure to COVID-19. Several studies now indicate that natural immunity to the virus is superior and longer lasting than vaccine-induced immunity.<sup>6</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Le Bert N, et al. SARS-CoV-2-specific T cell immunity in cases of COVID-19 and SARS, and uninfected controls. *Nature*. August 20, 2020. Vol 854; Gaebler C et al., Evolution of antibody immunity to SARS-CoV-2, *Nature*. 2021 March; 591(7851): 639-644; Gazit et al. Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections. Pre-print at: <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1>



# Justice Centre for Constitutional Freedoms

Thus, the new law appears to be about coercing Canadians into taking the vaccine by restricting their freedoms, not about creating virus-free spaces.

We remind you that the *Canadian Charter of Rights and Freedoms* enshrines the protection and guarantee of individual rights and freedoms of all Canadians. All government measures must comply with the *Charter* by not infringing any of its enumerated rights, **subject to such reasonable limits...as can be demonstrably justified in a free and democratic society**. In our view, the oppressive and overbroad vaccine passport regime cannot be legitimized on this basis.

The JCCF believes these measures are unconstitutional because they violate sections 2, 7 and 15 of the *Charter*<sup>7</sup> under which Canadians enjoy the right to freedom of conscience, the right to liberty and security of the person and the right to be equal before the law. Based on these guarantees, every Canadian has the right to be governed by his or her own conscience and beliefs, which includes the right to informed consent in relation to medical treatment. That right requires each person's health care practitioner to provide full information regarding the benefits, risks and side effects of a proposed treatment, the alternatives to treatment and the consequences of declining treatment, and all this must be communicated without the presence of coercion of any kind, whether direct or indirect. Clearly, vaccine passports violate this right since they are based on state coercion.

From this perspective, the government's new measures are particularly troubling since children as young as twelve years old will be coerced into getting the vaccine, and that will occur when they and their guardians are not fully informed of the possible side effects of COVID-19 vaccines, which do not complete clinical trials until the year 2023. In this context, it should be noted that we were led to believe that the AstraZeneca vaccine was safe, but only after many Canadians experienced irreversible adverse side effects was the vaccine deemed unsafe and

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<sup>7</sup> Section 2 of the *Charter* states: "Every person has the following fundamental freedoms: (a) Freedom of conscience and religion; (b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) Freedom of peaceful assembly; and (d) Freedom of association."<sup>7</sup>

Section 7 states: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."<sup>7</sup>

Section 15(1) states: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."



# Justice Centre

## for Constitutional Freedoms

made available only for those who received it as a first dose. Concerns about the short and long-term side effects of COVID-19 vaccines are not irrational or frivolous.

It is unthinkable that Ontarians who exercise their right to refuse the vaccination will be segregated from the rest of society since that would violate section 15(1) of the *Charter*, which guarantees non-discrimination in the application of the law. The unvaccinated will be stigmatized and ostracized for exercising their fundamental right to informed consent. This will be a special hardship for unvaccinated children who will be excluded from living a normal social life, as they will be prohibited from attending movies, restaurants or gyms with their friends and family. As a society, we have learned that when a minority group is segregated from mainstream society, it may suffer multiple forms of discrimination that can take decades to remedy. Vaccine passports will intentionally pit Ontarians against one another and will create a dangerous divide instead of uniting them during a time of crisis.

We also note with great concern the Ministry of Health's statement that the government will only recognize two exemptions for vaccine passports:<sup>8</sup> one for those who are allergic to an ingredient in the vaccine, with verification provided by an allergist,<sup>9</sup> and another for those who experienced myocarditis or pericarditis after the first dose of a vaccine.<sup>10</sup> There is no explanation for this extremely narrow list of exemptions and why it ignores natural immunity, as well as the fundamental right to informed consent and the many legitimate concerns Ontarians have about the safety and efficacy of the vaccines.

The JCCF seeks to protect the right to informed consent, and with it, the freedom of Ontarians to decide which medical interventions, drugs or vaccines are best for themselves and their children.

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<sup>8</sup> [Ontario confirms there are only two valid medical exemptions from COVID-19 vaccines | CTV News](#)

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*



# Justice Centre

for Constitutional Freedoms

The Justice Centre has been retained and writes on behalf of its clients based on the first principles of our legal system, and also makes common cause with the many concerned Ontarians who oppose the unprecedented vaccine passport. Should the vaccine passports be implemented as planned, we will be launching a *Charter* challenge against the government of Ontario, seeking redress from the Courts on behalf of our clients and all aggrieved citizens in the province.

*Sayeh Hassan*

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**Sayeh Hassan (Ms.)**

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