

FEDERAL COURT

BETWEEN:

**AMANDA YATES, PATRIC LAROCHE, JENNIFER HARRISON,
VICTOR ANDRONACHE, SCOTT BENNETT, BEVERLEY MASON-
WOOD, DAWN BALL, MATTHEW LECCESE, DARLENE THOMPSON,
ALEXANDER MACDONALD, AND MARCEL JANZEN**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER ss. 18(1) and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 and Rules 300(a) and 317 of the Federal Courts Rules, SOR/98-106.

**NOTICE OF APPLICATION
FOR JUDICIAL REVIEW**

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 Toronto.

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 file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitors 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.

August 23, 2022

Issued by: _____
(Registry Officer)

Address of local office:
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I. THE APPLICATION

1. This is an Application, made pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act*,¹ for judicial review against Order in Council 2021-1050 dated December 21, 2021, and subsequent iterations with substantially similar provisions (the “Decision”).² The Decision was made pursuant to section 58 of the *Quarantine Act*, (the “*Quarantine Act*”).³
2. The Decision, with limited exceptions, requires Canadians who are not vaccinated with the Covid-19 vaccine or who are vaccinated but do not use ArriveCAN to undergo testing and a mandatory 14-day quarantine upon returning to Canada.
3. This is an Application for judicial review and is a constitutional and quasi-constitutional *vires* challenge in relation to the Decision in respect of the *Constitution Act, 1867*, 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 (*Constitution Act, 1867*), the *Constitution Act, 1982*, and the Canadian Charter of Rights and Freedoms (the “*Charter*”), and on the basis that:
 - a. The Decision has been created and promulgated in a manner, means and in a form which is incorrect and unreasonable;
 - b. The Decision lacks natural justice and is otherwise *ultra vires* the enabling statute, the *Quarantine Act*; and
 - c. The Decision breaches the rights afforded to the Applicants by sections 2(a), 6, 7, 8, 9 10(b) and 15 of the *Charter* in a manner that is not justified in a free and democratic society.

II. THE APPLICANTS SEEK:

4. The Applicants seek the following relief:

¹ *Federal Courts Act* R.S.C. 1985, c. F-7

² *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)* OIC PC 2021-1050, <<https://orders-in-council.canada.ca/attachment.php?attach=41406&lang=en>>.

³ *Quarantine Act* S.C. 2005, C. 20

- a. A Declaration pursuant to section 52 of the *Charter* that the Decision is unconstitutional as it breaches sections 2(a) 6, 7, 8, 9, 10(b) and 15 of the *Charter* and is not demonstrably justified under section 1 of the *Charter*;
- b. A Declaration that the Decision is *ultra vires* section 58 of the *Quarantine Act*;
- c. Damages against Her Majesty The Queen in Right of Canada under section 24(1) of the *Charter* in the amount of \$1,000.00 for each Applicant;
- d. An Order pursuant to section 18(1) of the *Federal Courts Act* and section 24(1) of the *Charter* in the nature of *certiorari* quashing the Decision; and
- e. Such further and other relief as counsel may advise and this Honorable Court considers just and necessary.

III. THE GROUNDS OF THE APPLICATION ARE:

A. The Decision

5. On December 20, 2021, the Decision was promulgated as Order in Council 2021-1050. It was in force from December 20, 2021, until January 31, 2022.
6. The Decision requires that proof of Covid-19 vaccination must be provided by “electronic means specified by the Minister of Health” unless the Minister of Health determines that they belong to a class unable to use those electronic means.⁴ The means specified by the Minister of Health is the ArriveCAN app.
7. New Orders in Council which also mandate the use of ArriveCAN have been promulgated every month since. The most recent Order in Council is 2022-0863 which is in effect from June 27, 2022, until September 30, 2022.⁵

⁴ *Ibid* at 20(8).

⁵ *Minimizing the Risk of Exposure to COVID-19 in Canada*, OIC PC 2022-0836, < <https://orders-in-council.canada.ca/attachment.php?attach=42369&lang=en>>

8. The Minister of Health has failed or refused to provide evidence to the public, including to the Applicants, that ArriveCAN's unprecedented data collection is legal or secure, or that said data collection is sufficiently limited temporally and in scope.
9. ArriveCAN has proven to be unreliable and prone to errors which have infringed the *Charter* rights of Canadians.
10. The Decision provides a narrow and underinclusive list of exemptions which are only provided in "extraordinary circumstances" and at the discretion of a quarantine officer.⁶

B. The Applicants

i. Amanda Yates

11. The Applicant, Ms. Amanda Yates is 31 years old, a resident of Ottawa, Ontario, and a Canadian citizen.
12. Ms. Yates went to the United States ("US") to get on a flight from Ogdensburg, New York, to Nashville, Tennessee, to attend a friend's engagement. Ms. Yates flew back to Ogdensburg, and was picked up by her husband for the return trip to Ottawa on May 31, 2022. Ms. Yates's husband downloaded ArriveCAN and used it for both of them at the land border.
13. There was an apparent issue with ArriveCAN and Canada Border Services Agency ("CBSA")agents sent Ms. Yates and her husband to secondary inspection. CBSA agents asked Ms. Yates for her vaccination status, which she declined to disclose due to privacy concerns.
14. CBSA agents then sent Ms. Yates to Public Health Agency of Canada ("PHAC")agents, who insisted on disclosure of her vaccination status which she refused to disclose due to privacy concerns. She was issued a fine for \$6,255 for non-compliance with section 58 *Quarantine Act*, and was required to quarantine for 14-days, which she complied with.

⁶ *Ibid* at s.20(3).

ii. Patric LaRoche and Jennifer Harrison

15. The Applicants, Mr. Patric Laroche and Ms. Jennifer Harrison, are a married couple residing in Sawyerville, Quebec. They are both Canadian citizens. They have been married for 13 years and have one child. Together they operated trucks for a private company, transporting livestock between Canada and the United States. Mr. LaRoche has been driving trucks for 18 years.
16. Ms. Harrison obtained her transport licence in 2020 after their daughter completed high school, and she obtained a position together with Mr. Laroche so they could spend more time together.
17. Mr. Laroche and Ms. Harrison rely solely on their trucking employment and activities to provide for their family. Prior to the Decision, they crossed the border to the US for work one to two times per week from multiple provinces in Canada.
18. On April 2, 2022, Mr. LaRoche and Ms. Harrison each received an \$8,550 fine from Canada CBSA on the basis that they “failed to comply with an order prohibiting or subjecting to any condition for entry into Canada.”
19. Mr. LaRoche and Mrs. Harrison have chosen not to receive the Covid-19 vaccines after reviewing the potential side effects listed by Health Canada. Further, they both believe that the uncertainty and risk associated with the vaccines are too great to consent to receiving them.
20. Mr. LaRoche and Ms. Harrison object to the use of such products in exercise of their conscience and bodily autonomy. They believe that having to disclose their vaccination status to the Respondents as a condition of crossing the border in their private commercial vehicle is a violation of their privacy.

iii. Victor Andronache

21. The Applicant, Mr. Victor Andronache is 32 years old, a resident of Toronto, Ontario, and a Canadian citizen. Mr. Andronache is uncomfortable with disclosing private medical information to non-medical practitioners who are not treating him and has privacy concerns with ArriveCAN.
22. Mr. Andronache left Canada for an unplanned trip in July 2022 to attend his grandfather's funeral in Romania. He returned to Canada via Pearson International Airport ("Pearson") on July 12, 2022.
23. CBSA agents at Pearson informed Mr. Andronache that it was a requirement to use ArriveCAN for all travelers. Mr. Andronache had been travelling for 24 hours by the time he landed at Pearson.
24. The CBSA agents referred Mr. Andronache to PHAC agents, who asked questions about his vaccination status, which Mr. Andronache refused to answer on privacy grounds. After police were called to the scene he felt coerced by the PHAC agents into downloading ArriveCAN. It failed to work properly. The PHAC agents insisted that he re-download ArriveCAN, and after it failed again he was told to log in through the online portal.
25. After being threatened with a fine, Mr. Andronache reluctantly disclosed his vaccination status to the PHAC agents. He was fined non-compliance with section 58 *Quarantine Act* for \$6,255.

iv. Scott Bennett

26. The Applicant, Mr. Scott Bennett is 23 years old, a resident of Ontario, and a Canadian citizen. Mr. Bennett has a medical exemption for the Covid-19 vaccine due to a medical contraindication.
27. Mr. Bennett returned to Canada from a trip via Pearson on July 12, 2022 and was told by a CBSA agent to use ArriveCAN. He refused due to privacy concerns and CBSA referred him to PHAC.

28. PHAC agents insisted that Mr. Bennett use ArriveCAN. Peel Regional Police was also present and requested he produce a second piece of identification, despite already having produced his passport. Mr. Bennett was informed by the Peel Police that he was being detained and that they would search his person for additional identification if he continued to refuse. He was not informed of his right to counsel at any point. Peel Regional Police ultimately did not do a pat-down search. Mr. Bennett was issued a fine for non-compliance with section 58 *Quarantine Act* for \$6,255.

v. Beverley Mason-Wood and Dawn Ball

29. The Applicants, Ms. Beverley Mason-Wood and Ms. Dawn Ball are mother and daughter and reside on Vancouver Island in British Columbia and are Canadian citizens. Ms. Mason-Wood is 76 years old, and Ms. Ball is 56 years old.

30. The pair went to the US to visit Ms. Ball's daughter (Ms. Mason-Wood's granddaughter) in July 2022. They had not seen her for eight months and had already missed her wedding due to travel restrictions. They returned on July 13, 2022, at the Peace Arch crossing in British Columbia.

31. CBSA agents demanded that they both use ArriveCAN. Ms. Ball did not have her phone with her and informed the CBSA agents of that. Ms. Mason-Wood declined to use ArriveCAN.

32. They were then referred to a PHAC agent, who asked for their vaccination status. The pair refused to answer on privacy grounds. The agent then issued them tickets for non-compliance with section 58 *Quarantine Act* for \$5,750 each.

vi. Matthew Leccese

33. The Applicant, Mr. Matthew Leccese, is 33 years old, resides in Thunder Bay, Ontario, and is a Canadian citizen. He had been on medical leave for a year from his job as an Ontario Provincial Police dispatcher. Mr. Leccese has privacy concerns with respect to the ArriveCAN and the storage and usage sensitive personal data within it.

34. Mr. Leccese went to the US on May 17, 2022, to pick up some parts for his vehicle. He crossed via Pidgeon River, Ontario. He was in the US for approximately 25 minutes before returning to Canada.
35. The CBSA agents demanded that Mr. Leccese use ArriveCAN. He refused due to privacy concerns with ArriveCAN and was directed by CBSA agents to PHAC. PHAC agents then proceeded to give Mr. Leccese an educational session on vaccine efficacy and safety. Mr. Leccese asked them for identification, as the agents wore no uniforms or identification. One of the agents agreed to produce identification, and went into the building to fetch it but never returned.
36. Mr. Leccese informed the PHAC agents that he was willing to show them an electronic file of his vaccination certificate which he had on his phone. PHAC refused to accept his electronic proof of vaccination and issued a ticket for non-compliance with section 15(1) for \$955 and non-compliance with section 58 *Quarantine Act* for \$6,255.

vii. Darlene Thompson

37. Ms. Darlene Thompson is a single mother and resides in Langley, British Columbia. She has been unemployed since November 2021 because of an injury she sustained in a car accident. Her partner lives in Washington State, and it has been difficult for Ms. Thompson to see him in the past 2 years.
38. She went to Washington in July of 2022 and returned on July 17, 2022, at a land crossing in British Columbia. CBSA agents demanded that she use ArriveCAN, which she declined. The CBSA agents then demanded her vaccination status. Ms. Thompson declined to answer on privacy grounds.
39. She was then referred to PHAC agents. PHAC agents continued to demand she disclose her vaccination status or receive a fine. Ms. Thompson again refused to disclose her medical information but agreed to answer any questions regarding symptoms and contact with anyone with symptoms of Covid-19.

40. CBSA agents searched her vehicle without her consent and found Ms. Thompson's passport and license, which they gave to the PHAC agents. PHAC then took the documents and issued a fine for non-compliance with section 15(1) *Quarantine Act* for \$900 and another for non-compliance with section 58 *Quarantine Act* for \$5,000.

viii. Alexander Macdonald

41. The Applicant, Mr. Alexander Macdonald, is a resident of Antigonish, Nova Scotia, and a Canadian citizen.

42. Mr. Macdonald attempted to cross the US border on April 21, 2022. US border agents asked him about his vaccination status and he answered in the negative. Mr. Macdonald was denied entry into the US and was issued a form that stated the grounds of denial. Mr. Macdonald returned to the Canadian border and presented the form to CBSA and returned to Canada without issue.

43. Mr. Macdonald attempted to cross the US border again on July 4, 2022 and was issued another denial of entry form. He presented the form to CBSA, but this time he was directed to secondary questioning. PHAC agents were called, and he was questioned about having appropriate quarantine facilities. PHAC also insisted that Mr. Macdonald use ArriveCAN for re-entry into Canada and for check-ins for the quarantine duration.

44. Although Mr. MacDonald informed PHAC officials that he at no time had entered the US and was able to present documentary proof of same, this information was ignored by PHAC officials. Mr. Macdonald reluctantly complied with the request to download ArriveCAN and began quarantining. He immediately deleted ArriveCAN after the quarantine requirement was over.

45. Mr. Macdonald has privacy concerns with ArriveCAN and disclosure of private medical information to the government. Mr. Macdonald objects to the use of such products in exercise of their conscience and bodily autonomy and believes that all Canadians should have the right to make their own private medical decisions without government coercion.

ix. Marcel Janzen

46. The Applicant, Mr. Marcel Janzen, is a resident of Morden, Manitoba, and a Canadian citizen.
47. Mr. Janzen was referred to a Florida clinic by his doctor for a medical procedure. He and his wife crossed the US border on April 22, 2022. They flew to Florida from the US without issue and returned April 27, 2022.
48. At the Canadian border, CBSA requested they disclose their vaccination status, which they refused on medical privacy grounds. CBSA then referred them to PHAC.
49. PHAC agents questioned them for over an hour on their vaccination status and quarantine facilities. They also requested that they use ArriveCAN. When Mr. Janzen asked if he could leave, PHAC said no and continued the questioning.
50. Mr. Janzen has privacy concerns about ArriveCAN and was concerned after reading the terms and conditions that stated ArriveCAN could disclose information to other government entities, including foreign ones.
51. Mr. Janzen and his wife were issued tickets delivered by Morden police months later in July. They were ticketed for breach of section 15(1) *Quarantine Act* for \$1,453 each and for breach of section 58 *Quarantine Act* for \$8,550 each.

C. LEGAL ISSUES

a. The Decision is *Ultra Vires* the *Quarantine Act*

24. Pursuant to section 58(d) of the *Quarantine Act*, the federal government must ensure that there are no reasonable alternatives to prevent the introduction of disease before issuing an order to detain Canadians contrary to their constitutional rights and freedoms. There are and were reasonable and minimally impairing alternatives available to the federal government.
25. The mandatory 14-day quarantine for unvaccinated Canadians and the usage of ArriveCAN for all Canadians must also be necessary and have no reasonable alternatives before an order can be made. The federal government has failed to demonstrate there are no

alternatives to 14-day quarantine for unvaccinated Canadians and the mandatory usage of ArriveCAN for all Canadians.

b. Charter Rights Violations

Section 2(a): The Right to Freedom of Religion

26. The Decision violates the right to freedom of religion. The Decision imposes a substantial burden on Canadians who choose not to be vaccinated as an expression of sincerely held conscientious or religious beliefs. The Decision does not include religious exemptions.

Section 6: The Right to Leave and Enter Canada

27. The Decision violates the mobility rights of the Applicants by selectively discriminating against them for their decision for declining to provide private medical information and declining to use ArriveCAN, as well as other unreasonable, harsh, and arbitrary consequences upon re-entry to the country.

Section 7: The Right to Life, Liberty and Security of Person

28. Quarantining all unvaccinated Canadians and those who do not use ArriveCAN for 14 days upon re-entering the country impairs liberty in a manner that is arbitrary, and overbroad, and therefore violates the principles of fundamental justice.

Section 8: Right to be free from Unreasonable Search and Seizure

29. The mandatory requirement to use ArriveCAN and its vaccine status disclosure requirements constitutes a search and breaches the right of the Applicants to be free from unreasonable search and seizure. Moreover, to the extent that ArriveCAN actively monitors the location of those Canadians forced to utilize it, the same is an unjustified breach of section 8.

Section 9: The Right not to be Detained Arbitrarily

30. The Decision occasions the arbitrary detention of healthy, asymptomatic travellers merely for being unvaccinated or failing to use ArriveCAN and is a breach of section 9 of the *Charter* which protects individuals against arbitrary detention.

Section 10 (b): Right to Counsel

31. The decision violated the Applicant's section 10 (b) rights by not affording them the opportunity to speak to counsel once they have been detained.

Section 15: The Right to Equality

32. The Decision violates the Applicants' section 15 rights to equality because it creates a distinction on the basis of religion and disability, which are enumerated grounds. Moreover, the Decision violates section 15 by discriminating on the basis of Covid vaccination status.

d. Legislation, Regulations and Enactments

33. The Applicants rely on the following legislation, regulations, documents, and enactments:
- a. *Canadian Charter of Rights and Freedoms*, ss. 1, 2, 6, 7, 8, 15 and 24(1);
 - b. *Constitution Act, 1982*;
 - c. *Canadian Bill of Rights*, S.C. 1960, c. 44;
 - d. *Federal Court Rules*, SOR/98-106;
 - e. *Quarantine Act*, S.C. 2005, C. 20;
 - f. *International Covenant on Civil and Political Rights*;
 - g. *The International Health Regulations (2005)*; and
 - h. Such further and other authorities and legislation as counsel may advise and this Honourable Court may accept.

IV. THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

34. Affidavit of Amanda Yates, to be sworn;
35. Affidavit of Patric LaRoche, to be sworn;
36. Affidavit of Jennifer Harrison, to be sworn;
37. Affidavit of Victor Andronache, to be sworn;
38. Affidavit of Scott Bennett, to be sworn;
39. Affidavit of Beverley Mason-Wood, to be sworn;
40. Affidavit of Dawn Ball, to be sworn;
41. Affidavit of Matthew Leccese, to be sworn;
42. Affidavit of Darlene Thompson, to be sworn;
43. Affidavit of Alexander Macdonald, to be sworn;
44. Affidavit of Marcel Janzen, to be sworn;
45. Other affidavit evidence, including affidavits from experts and fact witnesses, to be filed;
and
46. Such other material as counsel may advise and this Honourable Court may permit.

V. REQUEST FOR MATERIAL FROM THE TRIBUNAL

47. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Minister of Health, Health Canada, the Attorney General of Canada, and the Governor-in-Council provide a certified copy of the following materials that are not in the possession of the Applicants, but are in the possession of the Attorney General of Canada, to the Applicants and the Registry:

All records, including but in no way limited to research, analysis, policy papers, briefing reports, studies, proposals, presentations, reports, memos, opinions, advice, letters, emails and any other communications that were prepared, commissioned, considered or received by the Government of Canada in relation to:

- a. the Decision;

- b. All correspondence, letters, emails, and any other communications related to the Decision, between the Respondents and:
 - i. The Governor General in Council;
 - ii. The Prime Minister of Canada;
 - iii. The Privy Council Office;
 - iv. The Department of Justice;
 - v. Global Affairs Canada;
 - vi. Crown Indigenous and Northern Affairs Canada;
 - vii. The Provinces and Territories of Canada, including the Minister of Health of each Province and Territory;
 - viii. The elected, appointed or hereditary representatives of First Nations and Indigenous people of Canada; and
 - ix. The municipalities of Canada.

Dated August 24, 2022

Sayeh Hassan



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