



Court File No.: T-341-21

**FEDERAL COURT**

**DOMINIC COLVIN**

Applicant

**AND:**

**THE PRIME MINISTER OF CANADA, THE CHIEF PUBLIC HEALTH OFFICER  
OF THE PUBLIC HEALTH AGENCY OF CANADA, THE MINISTER OF  
TRANSPORT, THE MINISTER OF HEALTH and THE ATTORNEY GENERAL OF  
CANADA**

Respondents

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENTS:**

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

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 applicant. The applicant requests 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 file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, 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.

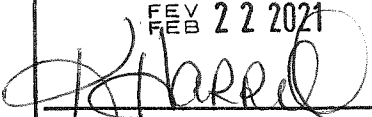
**ORIGINAL SIGNED BY  
KATHLEEN HARRILL  
A SIGNÉ L'ORIGINAL**

Date: FEB 22 2021, 2021

Issued by: \_\_\_\_\_  
Registrar

Address of local office:

Calgary Local Office, Federal Court of Canada  
Canadian Occidental Tower  
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Calgary, AB, T2P 3M3

I HEREBY CERTIFY that the above  
document is a true copy of the original  
filed in the Court on / and dated  
  
FEB 22 2021  
  
KATHLEEN HARRILL / REGISTRY OFFICER

TO: THE HONOURABLE JUSTIN TRUDEAU  
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## APPLICATION

**This is an application pursuant** to sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 for a judicial review of the Decision of the Respondents. The Decision was communicated to the Applicant on or about February 14, 2021 in the form of Order in Council 2021-0075. The Decision is that Canadian citizens and other individuals entering Canada by air are required to be incarcerated for a minimum period of three days in a facility selected by the Government of Canada at their own cost. This application seeks *inter alia* an order of *certiorari* quashing and setting aside the Decision, and a Declaration that said Decision is unconstitutional.

### **The Applicant makes an application for:**

1. If required, an order abridging the time for service of this Application and supporting materials required for the hearing of this application;
2. A Declaration that the Decision of the Respondents is an unreasonable, disproportionate, arbitrary and capricious exercise of their statutory power under the *Quarantine Act*, S.C. 2005, c. 20 (the "*Quarantine Act*"), or otherwise;
3. A Declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") that the Decision is unreasonable because it disproportionately limits sections 6, 7, and 9 of the *Charter*;
4. An Order of *Certiorari* to quash and set aside the Decision;
5. A Declaration that any Quarantine Incarceration Measures taken prior to February 14, 2021, were without authority and therefore *ultra vires*;
6. In the alternative, an Order granting the Applicant Public Interest Standing;
7. An Order that the application raises an issue of public importance to the Applicant and thus for costs on a solicitor-client basis and/or party and party costs in any event of the outcome; and
8. Such further and other relief that this Court deems just.

### **The Grounds for the application are:**

9. *Federal Courts Act*, R.S.C. 1985, c F-7, sections 18 and 18.1.
10. *Federal Court Rules*, Rules 8, 301, 302, 303 and 317.
11. *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, c. 11 sections 6, 7, 9, and 24(1).

12. *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)*, 2021-01-20, PC Number: 2021-0011.

13. The *Quarantine Act*, S.C. 2005, c. 20.

### **Background**

14. The Applicant is a Canadian citizen who resides in British Columbia and has family, property and business interests in British Columbia and Alberta.

15. On January 20, 2021, the Government of Canada issued an Order in Council, pursuant to section 58 of the *Quarantine Act* entitled “*Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)*” (the “**Order**”).

16. The Order came into effect on January 20, 2021 and ceases to have effect on February 21, 2021.

17. The Order forced persons entering Canada by air to self-quarantine and remain in quarantine until the expiry of the 14-day period that begins on the day on which the person enters Canada in a place (i) that is considered suitable by the Chief Public Health Officer, having regard to the risk to public health posed by COVID-19, the likelihood or degree of exposure of the person to COVID-19 prior to entry into Canada and any other factor that the Chief Public Health Officer considers relevant, (ii) where they will not be in contact with vulnerable persons, unless the vulnerable person is a consenting adult or is the parent or dependent child in a parent-child relationship, and (iii) where they will have access to the necessities of life without leaving that place.

18. Canada forced individuals to self-quarantine for 14 days whether or not they tested positive.

19. On January 29, 2021, the Government of Canada, via the Minister of Transport, issued a news release (the “**News Release**”) communicating to the Applicant the intention of the Respondents to amend the provisions of the Order and to abrogate the Canadian Constitution by requiring Canadian citizens and other individuals entering Canada by air to be incarcerated for a minimum period of three days in a facility of the Government of Canada’s choosing at their own cost (the “**Quarantine Incarceration Measures**”) and that these measures would be implemented as soon as possible in the coming weeks.

20. The News Release is just a news release and provided Canada with no legal authority to detain and force travelers quarantine at a federal quarantine incarceration facility.

21. The News Release was vague and only stated that the Quarantine Incarceration Measures would come into effect “as soon as possible in the coming weeks.” The News Release stated that “processes to support these new measures are in development.” The announcement also stated that travelers can only leave the quarantine incarceration facility

once they have received a negative test result from their on-arrival molecular test and demonstrate they have a suitable quarantine plan.

22. The announcement on the Government of Canada's website from Transport Canada dated January 29, 2021 and headed "Backgrounder" stated that travelers would be required to comply with the Quarantine Incarceration Measures "in the coming weeks".
23. Whereas the Government of Canada had decided on the Quarantine Incarceration Measures and announced that they will come into effect "in the coming weeks", the News Release had not yet been the subject of an Order in Council pursuant to the *Quarantine Act*.
24. At the time of the News Release, the current Order in Council regarding the requirements for air travelers entering Canada WAS PC Number: 2021-0011 dated January 20, 2021, expiring on February 21, 2021. The provisions of Order in Council 2021-0011 do not include the Quarantine Incarceration Measures.
25. Canada unlawfully incarcerated numerous Canadian citizens and travelers pursuant to the News Release and not under the authority of any properly passed law.
26. Canada treated the News Release as if was law instead it was a desire or wish of the federal government of Canada that was implemented by Canadian officials as if it was a properly enacted order pursuant to the *Quarantine Act*, which it was not.
27. The News Release was not lawful because it was not passed by an Order in Council under the authority conferred by an Act of Parliament, including the *Quarantine Act*. The Respondents unreasonably ignored constitutional procedures before making and announcing the News Release and the Respondents have exceeded their authority in making it. The News Release is one which had caused harm to the Canadian population and was made absent any proper constitutional procedure.

### **The Decision**

28. On February 14, 2021, the Government of Canada issued Order in Council 2021-0075 (the "**Decision**") wherein pursuant to section 58 of the *Quarantine Act*, the Order In Council 2021-0075 proclaims, as an annex, the *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)*.
29. Canada's Decision mandates that anyone, other than those that are exempt, entering Canada by aircraft must provide "evidence of prepaid accommodation that enables the person to remain in quarantine at a government-authorized accommodation for a three-day period that begins on the day on which they enter Canada".
30. There is no guarantee that the quarantine is for three-days as there is no guarantee that the test results will be released in three-days by the third-party laboratory.

31. All cost of the mandatory quarantine at a federal quarantine incarceration facility is borne by the traveler.
32. Canada's Decision differentiates and provides separate orders to people entering Canada via aircraft or any means other than aircraft.
33. As a result of the Decision declared by the Government of Canada, if a Canadian citizen or another individual was to test positive for COVID-19, that person is subject to a further period of incarceration for 14 days, or longer, at their own cost at a federal quarantine incarceration facility.
34. The Decision provides numerous classes of individuals that are exempt from the measures.
35. The Decision is an unreasonable, disproportionate, arbitrary, and capricious exercise of the Canada's executive and statutory powers and should be set aside.
36. The Decision is overbroad, vague, and unnecessary. It deprives returning travelers of their liberty in a manner inconsistent with the manner in which resident citizens are treated without reason or justification.
37. The Decision disproportionately and unfairly targets travelers who travel by air from other countries.
38. Canada's quarantine provisions treat returning traveling residents of a province unequally to residents of a province in so far as, residents of a province who have not traveled outside of the country are permitted to voluntarily identify themselves as symptomatic for COVID-19, voluntarily present themselves at testing centers to obtain a test, voluntarily quarantine themselves in their home while awaiting their test results, and voluntarily self-quarantine for 14 days in the event of a positive test. There is no requirement for residents of a province to mandatorily quarantine themselves in a government quarantine facility even if such individuals exhibit COVID-19 symptoms or are confirmed to be COVID-19 infected. As such, the measures implemented by the Decision against returning travelers possessing a negative COVID-19 test prior to re-entry into Canada are both arbitrary, capricious, overboard, unnecessary, and offend the Government of Canada's obligations to ensure that any and all infringements of constitutionally protected rights are "as little as possible."
39. The Decision allows Canadian officials to arbitrarily incarcerate any person, citizen, resident, or visitor, entering Canada without guidance, judicial oversight or reasonable justification.
40. Canada's Decision to incarcerate people lacks justification for the extraordinary measure of forcing Canadian citizens and other individuals entering Canada by air to be incarcerated for a minimum period of three days in a facility of the Government of Canada's choosing at their own cost.

41. Even if the arbitrary incarceration measures were at the cost of the Government of Canada, it would still be unjustifiable.
42. The rule of law and the constitutional rights of Canadian citizens and other individuals are not suspended by the declaration of a public health crisis. The Constitution, both written and unwritten, continues to apply to all legislation and government decisions and operates to protect the fundamental freedoms and civil rights of all Canadian citizens and other individuals notwithstanding the presence of an infectious illness.
43. The Constitution and its historical and legal underpinnings exist as a check on the power of individuals within the government, such as the Respondents, over the lives of citizens. The Constitution is a powerful legal tool that protects us from breaches of specific rights and freedoms by government. The citizens of Canada have never waived or foregone their rights to the checks and balances of the rule of law.
44. The purpose of the *Charter* and the *Constitution* are essential to keeping Canada a free and democratic society.
45. In addition to being procedurally deficient and unconstitutional, the Decision is inconsistent with *Charter* values and unjustifiably limits the Applicant's *Charter* rights and freedoms.
46. Under section 6 of the *Charter*, every citizen of Canada has the right to enter Canada.
47. Under section 7 of the *Charter*, 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.
48. Under section 9 of the *Charter*, everyone has the right not to be arbitrarily detained or imprisoned.
49. Canada's Decision to unlawfully incarcerate Canadian citizens and other individuals entering Canada by air, for a minimum of three days, including those such as the Applicant who are presently located outside of Canada, disproportionately limits the fundamental rights and freedoms protected by sections 6, 7 and 9 of the *Charter*.
50. Canada's Decision to incarcerate individuals entering Canada by air, for a minimum of three days, disproportionately limits liberty and security of the person as protected by section 7 of the *Charter* and is not in accordance with the principles of fundamental justice.
51. Canada's Decision is contrary to Articles 32 and 40 of the World Health Organization's *International Health Regulations*.
52. Canada's Decision to incarcerate individuals entering Canada by air for a minimum of three days unjustifiably infringes the right not to be arbitrarily detained or imprisoned. The

Decision does not explain the rational connection between the forced quarantine of any individual testing negative prior to them entering Canada and as such is arbitrary in this regard.

53. The Applicant will be requesting that this matter be expedited so that it may be heard in a timely manner in order that the relief sought is capable of being effective. The Applicant may also seek interim injunctive relief.
54. Such further grounds as counsel may request and this Court may permit.

**This application will be supported by the following material:**


55. The affidavit of Dominic Colvin.
56. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicant requests that the Respondents transmit a certified copy of the following material that is not in the possession of the Applicant to the Applicant and to the Registry:

- The record of materials before the Respondent Decision-makers relied on or considered by them at the time of making the Decision; and
- Any non-privileged communication whereby any element to the Decision was discussed.

Dated: February 19, 2021

RATH & COMPANY

*for*   
Per: \_\_\_\_\_  
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