

FORM 4F
COURTS OF JUSTICE ACT
ONTARIO COURT OF JUSTICE

BETWEEN

HIS MAJESTY THE KING

-and-

ELIM SLY-HOOTON

Defendant

NOTICE OF CONSTITUTIONAL QUESTION

The Defendant intends to question the constitutional validity of sections 19, 20(2) and 22 of Order-in-Council PC 2022-0836, made pursuant to section 58 of the *Quarantine Act* (collectively “the Provisions”). The Defendant asserts that the Provisions violated his liberty interest under section 7 of the *Charter of Rights and Freedoms*, his right to be free from unreasonable search and seizure under section 8 of the *Charter*, his right to be free from arbitrary detention and imprisonment under section 9 of the *Charter*, and his right to retain and instruct counsel without delay and to be informed of that right upon arrest or detention pursuant to section 10(b) of the *Charter*. These violations are not justified under section 1 of the *Charter*.

The Defendant seeks a stay of proceedings under section 24(1) of the *Charter* as a remedy for the violation of his Charter protected rights.

The questions are presently scheduled to be argued on the 1st day of March 2024 at 3:00 PM at Courtroom M4, 950 Burnhamthorpe Road West, Mississauga, Ontario.

The following are the material facts giving rise to the constitutional questions

1. Beginning on or around December 14, 2020, vaccines for the SARS-CoV-2 were first made available in Canada (the “Vaccines”). The Vaccines were unlike other previous vaccines in many important ways. Most relevant to this Application: the Vaccines did not prevent or even limit the spread of SARS-CoV-2, even among vaccinated individuals. Further, the Vaccines’ manufacturers did not advertise or otherwise suggest that the prevention of spreading the disease was a benefit of taking the Vaccines.
2. While there may have been some question in December of 2020 about whether the Vaccines could prevent the spread of SARS-CoV-2, by the summer of 2022 it was widely understood by public health and medical professionals that they did not.
3. On June 25, 2022, the Governor-in-Council promulgated PC 2022-0836 (“the Order”), which created obligations for travelers entering Canada. In particular:
 - a. section 20(2) required all persons entering Canada to disclose to the Minister whether they had received a Covid-19 vaccine;
 - b. section 19 of the Order required any person entering Canada to provide a suitable quarantine plan;
 - c. section 22 required persons who did not exhibit signs of Covid-19 to quarantine for 14 days; and
 - d. section 26 exempted quarantine for persons who provided the Minister of Health (“the Minister”) with proof they had received one of the Vaccines.
4. Mr. Sly-Hooton is a resident of British Columbia and a Canadian citizen. He returned to Canada on July 30, 2022, via Pearson International Airport in Toronto, Ontario.
5. On that date Mr. Sly-Hooton was informed of the above requirements by border

officials. Mr. Sly-Hooton declined to use the “ArriveCAN” application and to provide some of the requested information. As a result he was ticketed for failing to comply with an order contrary to section 58 of the *Quarantine Act*.

6. Mr. Sly-Hooton believes that whether he has taken one of the Vaccines is private medical information. He is not comfortable with sharing it for non-treatment purposes; particularly where his vaccination status does not impact the likelihood of him spreading SARS-CoV-2. He refused to disclose his vaccination status via ArriveCAN. After being surrounded by Peel Region Police and Public Health Agency of Canada (“PHAC”) agents, he reluctantly disclosed his vaccination status under duress. At no time did he wish to voluntarily provide this information to any government official in any form.

7. Mr. Sly-Hooton provided PHAC agents with a certificate of recovery issued by the Government of the Netherlands, which certified that he had previously tested positive for SARS-CoV-2 on May 30, 2022 and that he had officially recovered. At all material times Mr. Sly-Hooton had a natural immunity to SARS-CoV-2 which was significantly more effective at reducing transmission and disease severity than any of the Vaccines.

8. Mr. Sly-Hooton answered all screening questions regarding symptoms of SARS-CoV-2 that PHAC agents asked of him. Based on his answers, PHAC agents had no reason to believe that he had any flu-like symptoms. Mr. Sly-Hooton was then ordered to pick up testing kits and quarantine himself for 14-days.

9. During the interaction, Mr. Sly-Hooton asked a member of the Peel Regional Police if he was being detained. The officer replied that it was a detention. Mr. Sly-Hooton was not informed of his right to counsel nor was he provided an opportunity to retain and instruct counsel.

The following is the legal basis for the constitutional questions

10. The Order required the Defendant to quarantine for 14-days on the basis that he had not taken one of the Vaccines. He had no symptoms and there were no other risk factors which suggested the possibility that he was infected with SARS-CoV-2. In fact, the opposite is true. Just 60 days arriving in Canada, he had made a full recovery from the virus and had a robust natural immunity which exceeded the effectiveness of the Vaccines in reducing the spread of disease and reducing its severity. The Order required the Defendant to remain at home for the entire quarantine period. He was not legally allowed to leave his place of quarantine. The quarantine was an infringement of the Defendant's section 7 *Charter* rights as it deprived his liberty not in accordance with the principles of fundamental justice and cannot be justified under section 1.

11. The quarantine requirements were also a detention under the meaning of section 9 of the *Charter*. The detention was compelled based on an arbitrary distinction of having received one of the Vaccines or not. As outlined above, it was well known in July of 2022 that the Vaccines did not prevent the spread of SARS-CoV-2. The requirement to detain asymptomatic persons who did not receive one of the Vaccines, while exempting persons who did receive one, is an arbitrary detention and a breach of section 9 of the *Charter* and cannot be justified under section 1.

12. The Order compelled the disclosure of whether a person had received one of the Vaccines. This information is core biographical information, as it pertains to one's medical choices. The Defendant had a reasonable expectation of privacy in this information. The requirement to disclose this information is an unreasonable search within the meaning of section 8 of the *Charter* and cannot be justified under section 1.

13. The Defendant was suspected of committing an offence under the *Quarantine Act*. He was subject to lengthier and more intrusive questioning than one would usually expect while crossing an international border into Canada. Under all of the circumstances, the defendant's right to counsel was engaged. He was not informed of his right to counsel nor was he provided an opportunity to retain and instruct counsel. PHAC officers and Peel Regional Police failed in both the informational and implementation components of their duties under section 10(b) of the Charter.

14. The Defendant was never informed of his right to counsel during his 14-day quarantine. Neither Order-in-Council PC 2022-0836 or any government policy provided guidance to PHAC officers and police about providing right to counsel to persons who were detained under the *Quarantine Act*. This is a systemic breach of not just the Defendant's right to counsel, but of many other similarly situated Canadians.

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