

**FORM 337**

Court File No. T-480-21

**FEDERAL COURT**

**B E T W E E N:**

*(Court Seal)*

**KEEAN BEXTE**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**NOTICE OF APPEAL**

**TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

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 APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

July 6, 2021

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: \_\_\_\_\_

TO:

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Also, to the following applicants who may be directly affected by the appeal, pursuant to Rule 339 of the *Federal Courts Rules*, SOR/98-106:

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## APPEAL

**THE APPELLANT APPEALS** to the Federal Court of Appeal, pursuant to section 27(1)(a) and 27(2)(b) of the *Federal Courts Act*, RSC 1985, c F-7 from the judgment of the Honourable Chief Justice Paul S. Crampton, dated June 18, 2021, in which he dismissed the Appellant’s judicial review application.

**THE APPELLANT ASKS** that the Federal Court of Appeal overturn the decision of the Federal Court with respect to whether the *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)*, Order in Council PC Number: 2021-0075 (the “**Accommodation Order**”) or subsequent and substantially similar Orders are:

- (i) *ultra vires* the *Quarantine Act*, SC 2005, c 20 (the “**Quarantine Act**”);
- (ii) unconstitutional for being contrary to and in violation of section 7 and section 9 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the “**Charter**”).

**THE GROUNDS OF APPEAL** are as follows:

### *Ultra Vires the Quarantine Act*

1. The application judge erred in fact in finding that the Governor in Council had come to the opinion that there were “no reasonable alternatives to prevent the introduction or spread” of COVID-19, as required by section 58(1)(d) of the *Quarantine Act*, besides detaining international air travellers for three days in a government-authorized accommodation.
2. More specifically, the application judge erred in fact in finding that the Governor in Council had come to the opinion that there were “no reasonable alternatives to prevent the introduction or spread” of COVID-19, as required by section 58(1)(d) of the *Quarantine Act*, besides detaining international air travellers who would not use public conveyances and otherwise had safe and effective quarantine or isolation plans.
3. The application judge erred in fact and law in finding that the requirements of section 58(1)(d) of the *Quarantine Act* were satisfied prior to making the Accommodation Order.
4. The application judge erred in fact in finding that there was any evidence on the record that the Governor in Council was of the opinion that there were “no reasonable alternatives to prevent the introduction or spread” of COVID-19.
5. The application judge erred in fact in finding that Ms. Barton’s unsupported statement during cross-examination where she speculated that travelers might modify their behaviour

after day 1 testing, was evidence that the Governor in Council was of the opinion that there were “no reasonable alternatives to prevent the introduction or spread” of COVID-19.

6. The application judge erred in law in finding the recital to the Accommodation Order satisfied the section 58(1)(d) requirement.
7. The application judge erred in concluding that the Accommodation Order was within the purview of delegated authority granted by section 58 of the *Quarantine Act*.
8. The application judge erred in finding that the Governor in Council’s purported opinion, with respect to section 58(1)(d) of the *Quarantine Act*, was reasonable.
9. The application judge therefore erred in concluding that the Accommodation Order was *intra vires* the *Quarantine Act*.

#### **Violation of Section 9**

10. The application judge was correct in finding that the three-day quarantine in the government-authorized accommodation “unquestionably” constitutes a “detention” within the meaning of section 9 of the *Charter*.
11. The application judge erred in finding that the detention was not arbitrary.
12. Specifically, the application judge erred in finding that the detention was not arbitrary and carried out reasonably. The application judge erred in finding that it is not arbitrary nor unreasonable for a traveller, who otherwise has an appropriate quarantine or isolation plan and who will not be using public conveyances, to be detained for three days and then released on the same substantive terms whether the traveller tests positive or negative.

#### **Violation of Section 7**

13. The application judge was correct in finding that the three-day quarantine in the government-authorized accommodation “plainly violate[s]” the liberty interests of the Appellant pursuant to section 7.
14. The application judge erred in finding the deprivation of a traveler’s residual liberty, in comparison to quarantine at home or other quarantine measures that may be imposed, to be insubstantial.
15. In addition, the application judge erred in finding the deprivation of liberty to be in accordance with the principles of fundamental justice, specifically in finding that the Accommodation Order is not arbitrary, not overly broad, and not grossly disproportional.

16. More specifically, and among other things, the application judge erred in fact in finding that Ms. Barton's unsupported statement during cross-examination where she speculated that travelers might modify their behaviour after day 1 testing supported a finding that the Accommodation Order was consistent with the principles of fundamental justice.

## **Conclusion**

17. The Appellant asks that the Federal Court of Appeal find that the Accommodation Order is *ultra vires* the *Quarantine Act* and that therefore the Accommodation Order should be quashed.
18. The Appellant also asks that the Federal Court of Appeal find that the Accommodation Order violates section 7 and section 9 of the *Charter*, that it cannot be saved by section 1, and that therefore the Accommodation Order (and substantially similar and subsequent Orders), in whole or in part, is of no force or effect pursuant to section 52 of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
19. The basis of the Federal Court of Appeal's jurisdiction is the *Federal Courts Act*, RSC 1985, c F-7, section 27(1)(a) - the judgment appealed from is final and therefore, leave to appeal is not required.

July 6, 2021



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