

ADVOCACY FOR FAMILY REUNIFICATION AT
THE CANADIAN BORDER

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OPEN BORDERS.

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TO BE TOGETHER.

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reunification
of
families

covid-19

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Policy Proposal with Family Reunification Quarantine Plan

Regarding: Charter violation under section 15 of the
Charter of Rights and Freedoms due to foreign
national adult children and committed partners of
Canadians not given exemptions to enter Canada.

Enclosed: Four-Point quarantine plan to abate
concerns of increased COVID-19 risks due to
foreign national family reunification in Canada.

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Regarding Family Reunification – August 2020

Proposal: Allow foreign national committed partners or adult children of Canadians to reunite in Canada, either by creating an exemption for those classes of foreign nationals, or by expanding the current definition of “family” as defined in Order in Council 2020-0523 and 2020-0469. This is supported by an official House of Commons petition, e-2657, with over 5300 voting Canadian and Permanent Resident signatures.

Background: Canada’s *Human Rights Act* provides that every person has the right to be treated equally without discrimination by our Federal government. The purpose of anti-discrimination laws is to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice.

There are several ways of defining and identifying discrimination based on family status. Discrimination because of family status includes any distinction, including exclusion, restriction or preference based on family status, that results in the impairment of the recognition of human rights and fundamental freedoms.

Discrimination based on family status may be described as any distinction, conduct or action, whether intentional or not, but based on a person’s family status, which has the effect of either imposing burdens on an individual or group that are not imposed upon others, or withholding or limiting access to opportunity, benefits, and advantages available to other members of society.

In the context of equality claims under s. 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), the Supreme Court of Canada has offered the following three inquiries as a tool for determining whether discrimination has occurred:

1. **Differential Treatment**

Was there substantively differential treatment, either because of a distinction, exclusion or preference, or because of a failure to take into account the individual’s already disadvantaged position within Canadian society?

2. **An Enumerated Ground**

Was the differential treatment based on an enumerated ground, in this case family status?

3. **Discrimination in a Substantive Sense**

Finally, does the differential treatment discriminate by imposing a burden upon, or withholding a benefit from, an individual? The discrimination might be based on stereotypes of a presumed group or personal characteristics, or might perpetuate or promote the view that an individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society who is equally deserving of concern, respect and consideration. Does the differential treatment amount to discrimination because it makes distinctions that are offensive to human dignity?



Let's consider the current policies permitting immediate family members of Canadians to visit from other countries. Under the existing Orders in Council, foreign nationals meeting the definition of spouse (whether legal or common-law) may visit Canada, subject to the imposition of a 14-day quarantine and minimum stay upon entry. People in committed relationships which fall outside this definition, regardless of the length or nature of their relationships, are not entitled to this benefit.

It's clear that the presence of loved ones, in particular during one of the most stressful events that we have ever collectively faced, is a benefit. Our government has acknowledged as much by crafting policies that grant immediate family members an exemption from border restrictions. To deny this benefit to committed couples who, for any number of reasons cannot or do not choose to marry, is clear discrimination based on family status. This distinction sends the unfortunate message that some families are valued by our government, and some are not, undermining the human dignity of the latter group. At a time in history when Canadians and our neighbours around the world are facing unprecedented challenges, the impact of this discrimination is heightened, and cannot be overstated.

Similarly, family members such as adult children who may be the closest relatives some Canadians have are unable to visit under the existing policies. The current policies also unduly impact members of the LGBTQ2S+ community who remain unable to marry in many jurisdictions, as well as lower income people, unable to leave work for extended periods, and therefore are unable to stay in Canada for the minimum 15 days. Caregivers are similarly affected. Canada prides itself on being an open-minded society, but through policy making, our government has denied that the interests and relationships of these people have value. This is anathema to our *Charter*, and clearly discriminatory.

To deny family reunification based on potential increases in COVID-19 case counts going forward is patently unfair. Families denied contact with their loved ones due to existing policies are not tourists, and are committed to safe, responsible travel and conduct while in Canada. Holding these families accountable for the potential irresponsible conduct of others, who may flout directives on social distancing, mask wearing or other medically justified actions, is unreasonable. We are ready, willing and able to take full responsibility for our actions, but not those of others. This is nothing more than any citizen of a free country expects and deserves.

Further, to claim that our cohort poses an undue risk to Canadians is disingenuous, based on recent decisions to permit NHL players to enter Canada, along with their "significant others". Committed partners of professional sports players have already been granted the very exemptions for which we advocate.

We encourage our government to consider alternatives to the existing policies that will restore to those denied time with their loved ones their basic human dignity, and to reunite these families, regardless of their makeup. Canadians have made many sacrifices over the last several months to slow the spread of COVID-19, and as we continue to evaluate how our country will recover from this pandemic, developing policies that will keep our people safe while respecting their basic human rights is not just the right thing to do – it is mandated by some of the most important pieces of



legislation ever to have been passed by our nation's government, the *Human Rights Act* and the *Charter*.

One of the co-founders of the 5000+ member (and growing) group Advocacy for Family Reunification at the Canadian Border, Dr. David Edward-Ooi Poon, BSc, MD, with guidance from Toronto epidemiologist Dr. Colin Furness, BSc, MSt, PhD, MPH, developed the proposed quarantine plan:

- a) to abate (as much as possible) concerns about increasing numbers of foreign nationals entering Canada that a change to current policies will bring, and
- b) to address the inequity created by current policies that permit essential travellers to leave Canada within two weeks as long as they quarantine, while requiring family members entering Canada under the current policies to remain in Canada for a minimum of 15 days, 14 of which are under quarantine.

Family Reunification Quarantine Plan

We propose the expansion of the definition of immediate family member travel exemptions outlined in Order in Council 2020-0523 and 2020-0469 to include committed partners and adult children of Canadians.

To abate concerns that family reunification would increase the adverse effects of COVID-19 on Canadians, we propose the following four-point plan:

1. Affidavit of Personal Responsibility for the Foreign National

The Canadian family member of the foreign national coming in to Canada under the family reunification exemption shall sign a legally binding, sworn affidavit both attesting to the genuineness of the familial relationship, and taking legal responsibility, acting as a guarantor, that the foreign national will follow quarantine as outlined by Order in Council 2020-0524. This can be enforced by fines and/or incarceration. There is precedent for such an affidavit in countries including Germany, Denmark, Norway, and the Netherlands. Austria, Switzerland, Finland, and Iceland require various levels of proof of a relationship.

2. Safe Coverage Provision

Coverage will be paid for by the Canadian signing the aforementioned enforceable affidavit. Alternatively, proof of health coverage/travel insurance shall be provided by the foreign national in order to enter Canada. An insurance policy for the purpose of this provision shall state explicitly that the health coverage/travel insurance will cover COVID-19 related medical concerns.

3. Border Point of Care Testing Provision

If feasible, based on availability of testing in Canada, all foreign nationals attempting to enter Canada through family reunification shall comply with rapid, same day COVID-19 testing at the point of entry, regulated to the standard of the Government of Canada. Should the foreign national test positive, they shall voluntarily and without question withdraw their application to enter Canada. This provision can be amended to include follow up testing during the foreign national's stay in Canada if



deemed suitable by the Government of Canada. All testing costs would be the responsibility of the foreign national and/or their guarantor/Canadian family member.

4. *Family Quarantine Provision*

Order in Council 2020-0524 allows Canadians and foreign nationals to enter Canada provided they quarantine. However, "A person who must quarantine themselves under section 3 or remain in quarantine under section 4 may leave Canada before the expiry of the 14-day quarantine period if they quarantine themselves until they depart from Canada."¹P

Foreign nationals who enter Canada under family reunification must meet two additional criteria according to Order In Council 2020-0523 and 2020-0469 - "the foreign national intends to enter Canada to be with their immediate family member who is a Canadian citizen or a permanent resident and can demonstrate the intent to stay in Canada for a period of at least 15 days."² A 14-day quarantine in Canada, followed by a possible 14-day quarantine in the foreign national's home country may not be feasible for many, for economic, childcare responsibility, or other reasons. If the 15-day minimum stay in Order in Council 2020-0523 and 2020-0469 is removed, we resolve that the Canadian family member who is in contact with the foreign national shall quarantine for 14 days upon first exposure to the foreign national, or consent to repeat negative COVID-19 testing as required by Canada.

Conclusion: The current definition of immediate family as defined in Order In Councils 2020-0523 and 2020-0469 are discriminatory based on family status, as outlined in the *Canadian Charter of Rights and Freedoms*. We propose an expansion to the definition of the term "immediate family", or similar exemptions, to include foreign national committed partners and adult children of Canadians. We have developed a four-point *Family Reunification Quarantine Plan* that aims to abate the concerns some Canadians may have regarding family reunification. This plan also outlines an enforceable strategy for the government to help manage COVID-19 risks in this population.

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¹ P.C. 2020-0524, June 29, 2020. <https://orders-in-council.canada.ca/attachment.php?attach=39482&lang=en>. Accessed August 8, 2020.

² P.C. 2020-0523, June 29, 2020. <https://orders-in-council.canada.ca/attachment.php?attach=39483&lang=en>. Accessed August 8, 2020.



References:

Ontario Human Rights Commission website, Discrimination based on family status:
<http://www.ohrc.on.ca/en/policy-and-guidelines-discrimination-because-family-status/v-discrimination-based-family-status>

Order In Council 2020-0524, Section 8: "A person who must quarantine themselves under section 3 or remain in quarantine under section 4 may leave Canada before the expiry of the 14-day quarantine period if they quarantine themselves until they depart from Canada."

Order in Council 2020-0523: The family member can enter Canada if "the foreign national intends to enter Canada to be with their immediate family member who is a Canadian citizen or a permanent resident and can demonstrate the intent to stay in Canada for a period of at least 15 days."

Order in Council 2020-0469: The family member can enter Canada if "the foreign national intends to enter Canada to be with their immediate family member who is a Canadian citizen or a permanent resident and can demonstrate the intent to stay in Canada for a period of at least 15 days."

Official House of Commons Petition e-2657
<https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-2657>