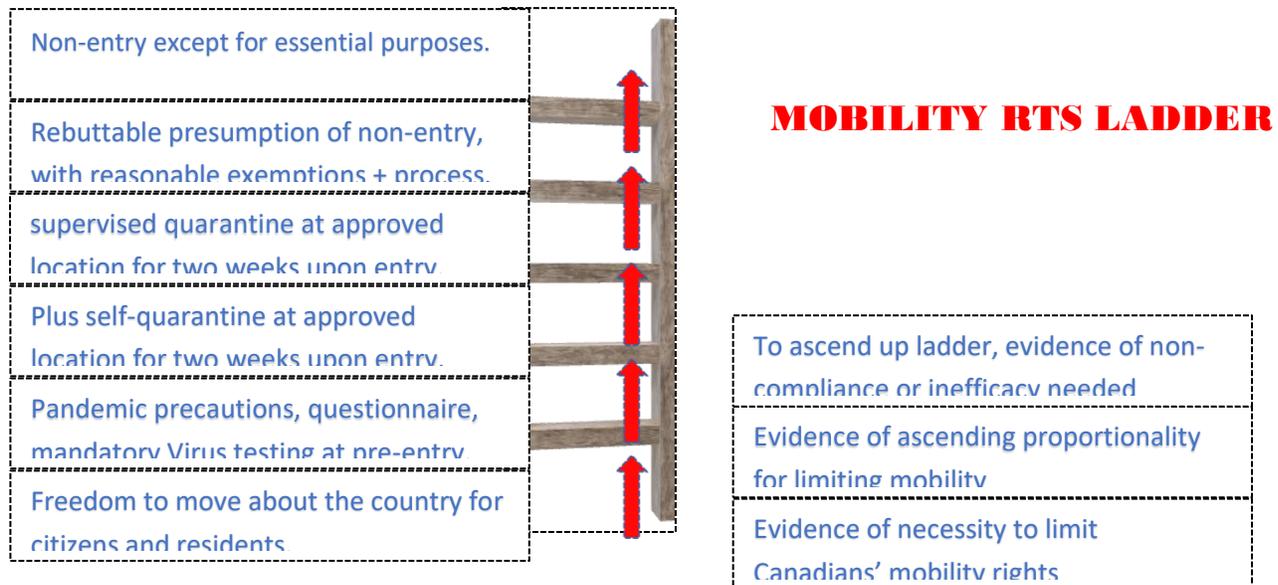


# Seeking Answers on New Restrictions (or why we are ascending the ladder of rights restrictions)

It has been a busy time to work as a government watchdog. At the CCLA, our role is to hold government accountable and help people across Canada do the same. When governments overreach or restrict our rights, we ask questions to try to understand their rationale. They can do what they want, normally. They get held to account at the ballot box. Except when it comes to constitutional rights. If they mess with our rights, then CCLA has a job to do.

Mess with our rights? If it's not compelling and evidence-based; if it's primarily political and fear-based; if it involves constitutional rights, then we take them to task and, sometimes, to court. It is not always popular (*it is frequently very unpopular*) but it is important. The rights enshrined in our Constitution shouldn't be taken for granted. While our *Charter* explicitly allows governments to limit rights, it also requires that those limits be reasonable and justified. Right now, every jurisdiction in Canada is engaged in limiting fundamental rights daily; expanding or contracting our freedoms based on a wide variety of considerations that are rarely transparent and frequently unexplained. We deserve answers from our governments, so where rights are concerned, we at CCLA venture forth to get those answers.



The complex network of travel restrictions that have cropped up across the country are but one example. Prior to March of 2020, I don't believe a Canadian province ever even tried to keep Canadians out; the notion of provincial or territorial "borders" has long existed for trade, taxes and sometimes for employment, but generally not for the simple movement of people. Canadians move to other provinces without it ever occurring to them that they may be denied the opportunity to return. Many live in one province and work in another. But now the rules for moving around Canada are increasingly complex

and changing regularly. It is as if Canada were not a nation, with all citizens having rights to access any part of the country. It is as if Canada were a bunch of republics or colonies, which it was before 1867, but never thereafter.

Last week Ontario announced it would be “closing” its borders to people entering from neighbouring Quebec and Manitoba. The rules don’t apply to those traveling by plane, train or other commercial means, but cars will be stopped and turned back at the border if an “essential” reason for travel is not established.

### ***Canadian Charter of Rights and Freedoms***

**Section 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.**

**Section 6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.**

**(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right:**

Nova Scotia has had a complex system in place for some time to try to ensure they keep track of those entering the province, presumably for the purpose of enforcing self-isolation requirements. Proof of online registration to enter the province has to be shown at a border entry and there are self-isolation requirements with daily digital check-ins. There are some exemptions from self-isolation as well, although the province still requires documentation from these people and that they follow a particular protocol. Despite these layers of protection, the province has shut its borders to all non-essential travel from anywhere in Canada (except Newfoundland and Labrador and Prince Edward Island). New Brunswick has similarly restrictive rules in place. P.E.I. recently announced new restrictions on entry that will be in place until at least mid-May. Even travelers who had already sought and obtained approval to enter the province (including seasonal residents who own property) have been told they will have to wait. In some cases, plans to permanently relocate to these provinces have been thwarted.

All these restrictions represent clear limits on the mobility rights that citizens and permanent residents have under the *Charter*. Are they justified? The threat posed by COVID-19 is certainly real and serious, but after living in limbo for over a year, I believe Canadians are entitled to a government response that is narrowly tailored and restricts rights as little as possible. Total prohibitions on the entry of some Canadians would seem to be offside. These are not the early days of the pandemic when we knew little about how the virus spread and had limited access to testing. In Nova Scotia, residents are encouraged to be tested regularly, and those who enter the province for work face some combination of testing and self-isolation requirements. If the risk can be mitigated in this way for some, why not for all?

The easy response, and one given by most governments, will be: “if you don’t *need* to travel, you shouldn’t”. It is a compelling one, until we drill down on the question of “need”. What governments deem essential are based on their priorities, with the economy frequently taking frontstage. Labour is essential, movement of goods is essential, but family support is not, emotional wellbeing is not. The mobility rights that Canadians have are supposed to mean that we can move freely without having to

justify that movement to government officials. The pandemic has turned this principle on its head, creating a presumption that non-residents should not be in the province absent a reason that has been approved by government.

In CCLA’s 2020 challenge to Newfoundland and Labrador’s travel ban, its Supreme Court ruled:

“Canada is a unified federation, not a series of republics. We are one people with one common country. The right to traverse Canada thus gives Canadian citizenship its true meaning and prevents artificial barriers from being erected between the provinces. ... In this manner the country may not be ‘converted into a number of enclaves and the ‘union’ which the original provinces sought and obtained disrupted.” *CCLA & Taylor v. Nfld & Lab*, 2020 NLSC 125 at para. 356.

As Canadians, we have accepted significant restrictions on our rights in the name of public health, banding together to try to keep case numbers down, avoid unnecessary deaths and preserve health care capacity. The mobility restrictions that are being put in place by governments need to be explained and justified. Why is entry with testing good enough for some, but not for others? If the government is going to go up the ladder of restrictions, there should be a clear justification for moving from one rung to the next.

To date, we haven’t heard those justifications from government. Some governments have been ascending step by step up the ladder, but without the

evidence that would justify the restriction – such as the federal quarantine requirements in 2021, that required everyone entering or re-entering Canada to fork out \$2000 to stay in an approved, supervised hotel. Other governments have just leap-frogged up the mobility ladder, skipping rungs along the way. Enough time has passed since COVID19 was a brand new thing for governments. We deserve answers about why, when and how our mobility rights restrictions are demonstrably justified. So let’s start asking.

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