



BRITISH COLUMBIA
ASSEMBLY OF
FIRST NATIONS

**PACE
SOCIETY**



**PIVOT
LEGAL SOCIETY**

April 21, 2021

Premier of BC John Horgan

Mike Farnworth, Minister of Public Safety and Solicitor General

David Eby, Attorney General and Minister responsible for Housing

VIA EMAIL ONLY

Subject: Proposed Travel Restrictions in BC and Accompanying Police Enforcement

Dear Premier Horgan, Minister Farnworth and Minister Eby,

We are writing to you today on behalf of the BC Civil Liberties Association, Union of BC Indian Chiefs, BC First Nations Justice Council, British Columbia Assembly of First Nations, First Nations Summit, Pivot Legal Society, Criminal Defence Advocacy Society, Coalition of Peers Dismantling the Drug War, Sanctuary Health, PACE Society, and the Pacific AIDS Network with serious concerns and questions about an upcoming provincial order on travel restrictions and accompanying police enforcement in BC, to be announced on April 23, 2021.

We absolutely believe there are urgent measures needed to be taken in order to curb the deadly spread of COVID-19 in our communities. However, we are deeply concerned about the overbroad and unconstitutional expansion of police powers that will disproportionately impact Black, Indigenous and racialized communities. Our key concern is with the proposed restrictions on a person's ability to leave their health-care authority and accompanying police enforcement.

It is concerning to us that the government would make two public announcements about a provincial order of this magnitude in such a vague way and with no accompanying details. We are also concerned that the comments of Premier Horgan and Solicitor General Farnworth are different from one another, which adds to the confusion experienced by the public. The lack of information and details about the order has raised many alarm bells, especially in the middle of a global and local reckoning about systemic racism in policing and policing powers.

Based on what we can gather from media reports, we have several concerns and questions for the provincial government regarding the serious constitutional issues at stake and potential harmful impacts of such a proposed order.

Definitions and Objectives:

1. What is “essential travel”? Will “essential travel” under the order be broadly defined to include, for example, access to support services, food delivery and mutual aid efforts in marginalized communities, care for a loved one, and work in criminalized economies? Indigenous, low-income and working-class people are often moving across local health authority boundaries to find more affordable or culturally-appropriate necessities.
2. How is the tailoring of the order to health authority boundaries connected to the objective of lowering COVID transmissions? What evidence is the Province relying on to inform the notion that the pending restrictions are reasonable limits on our rights?

Policing Powers:

3. What are the specific powers being granted to police that police will have to enforce this order?
4. What is the permissible scope of questioning that police will be authorized to conduct? Police do not currently have the powers to compel people to answer questions about where they are going and for what purpose. Would this order expand discretionary police powers to compel answers from BC residents suspected of traveling outside their health authority? All police powers, and especially discretionary police powers like police street checks, have a documented and indisputable history of being racist especially against Indigenous and Black people in BC.
5. What proof will police be asking for to ascertain if a person is leaving their health authority for essential travel? How are people expected to provide evidence that their mobility is essential? Will people have to produce sensitive personal information, such as proof of employment or medical information, to establish that their mobility is essential?

Due to a complex set of systemic institutional barriers, Indigenous peoples, migrants with precarious status, and those in criminalized economies are least likely to be able to provide the necessary evidence that might be demanded of them.

6. One of the many ways in which systemic racism in policing manifests is that racialized people, especially Black and Indigenous youth and gender-diverse people, are presumed guilty and have to prove their innocence. Can and how will the Province ensure that Black, Indigenous and racialized people are not subjected to increased police harassment, interrogation or surveillance during this questioning process by police?
7. Will people have access to legal counsel when stopped by the police at these checkpoints?
8. Will police have the authority to run people's names into police databases to, for example, collect information on outstanding warrants or check immigration status? Will the police be explicitly barred from enforcing other laws in the course of their questioning at these checkpoints? How will the provincial government ensure that police will not use these expanded police powers as a pretext for other law enforcement actions?
9. Will police be retaining or storing any information they collect in police databases? What are the restrictions on the collection, retention or disclosure of personal information? How will the provincial government ensure that any collected data is immediately destroyed?

Consequences:

10. What are the consequences for refusing to answer questions from the police? Will the police only have the power to issue violation tickets in the face of non-compliance with police questioning, or could the police obstruct people from continuing their movement (e.g. seize vehicles, detain people if they refuse to answer questions or provide identification documents, etc.)? Could it result in criminal charges such as obstruction?
11. What are the consequences for breaching the order? Due to the disproportionate levels of poverty that Indigenous, Black, racialized, and recent immigrant communities face, these communities will be less likely to be able to pay any fines that may be levied if they are found to be breaking the order.
12. Has the provincial government considered the potential and significant legal violations of constitutional and privacy rights and ensuing court challenges in drafting the order?

Consultation and Consent:

13. How are you consulting with diverse Black, Indigenous, racialized communities? Which organizations and individuals? It is a public process of consultation available to the most marginalized and vulnerable to police powers within diverse BIPOC communities?

14. How are you consulting sex workers and people who use drugs about the impact of travel on their access to services, travel to or from work, safe(r) supply, ethical substance use navigators, and services such as safe consumption sites, harm reduction distribution sites, peer support, and sex worker support services? Which organizations and individuals? Is it a public and safe consultation available to sex workers, people who use drugs, peer-led organizations, advocacy organizations, and harm reduction providers?

15. Indigenous peoples have been requesting full involvement in discussions regarding access to their respective territories since the COVID-19 pandemic began in spring 2020. The provincial government and all levels of government must recognize and respect First Nations jurisdiction and decisions in BC. Any introduction of orders that regulate movement of people throughout the province should have consent of all First Nations in BC. The Province has legislated the United Nations Declaration on the Rights of Indigenous People through the *Declaration on the Rights of Indigenous Peoples Act*.

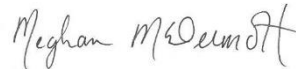
We welcome a response from your offices.

Sincerely,



Harsha Walia, Executive Director

BC Civil Liberties Association



Meghan McDermott, Policy Director & Staff Counsel



Grand Chief Stewart Phillip
President



Chief Don Tom
Vice President



Kukpi7 Judy Wilson
Secretary-Treasurer

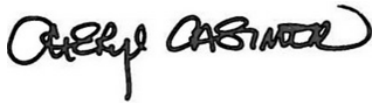
On behalf of the Union of BC Indian Chiefs



Doug White, QC, Chair, BCFNJC, on behalf of BC First Nations Justice Council



Regional Chief Terry Teegee, on behalf of the BC Assembly of First Nations



Cheryl Casimer



Robert Phillips



Lydia Hwitsum

On behalf of the First Nations Summit



Meenakshi Manoe, Criminalization & Policing Campaigner, Pivot Legal Society



Eris Nyx, Executive Director, Coalition of Peers Dismantling the Drug War



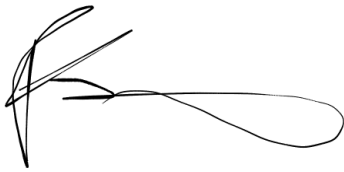
Kasandra Cronin, Q.C., President, The Criminal Defence Advocacy Society

Omar Chu

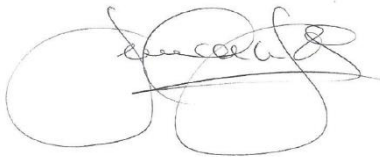
Omar Chu
On Behalf of Sanctuary Health



Byron Cruz



Kit Rothschild, PACE Society



Jennifer Evin Jones, BaH, Juris Doctor (JD), Executive Director, Pacific AIDS Network