



D COURT OF THE CAYMAN ISLANDS
ER OF S.26(1) OF THE CONSTITUTION
MATTER OF O.77A GCR

Cause No. of 2022

TYLER ANGLIN
(an infant, by Dione Anglin
his Next Friend and mother)

Petitioner

-and-

(1) THE ATTORNEY GENERAL
OF THE CAYMAN ISLANDS

First Respondent

(2) CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

Second Respondent

PETITION

TO: THE GRAND COURT OF THE CAYMAN ISLANDS

This Humble Petition of Tyler Anglin, c/o KSG Attorneys-at-Law, 4th Floor Harbour Centre, 42 North Church Street, Grand Cayman, Cayman Islands, shows that:

1. The Petitioner is Tyler Anglin, an eight-year-old boy who brings this petition through his next friend, Dione Anglin (his mother).
2. The First Respondent is the Attorney General of the Cayman Islands.
3. The Second Respondent is the Health Services Authority of the Cayman Islands ("**HSA**") (pursuant to O.77A, r.4(2)).
4. The Petitioner brings these proceedings pursuant to section 26(1) of The Cayman Islands Constitution Order 2009, Part 1, Bill of Rights, Freedoms and Responsibilities ("**the Bill of Rights**") on the basis that the government has breached or threatened his rights and freedoms under the Bill of Rights.
5. The Petitioner asserts that the Respondents have breached his rights and freedoms under sections 5, 9, 13, 16 and 20 of the Bill of Rights and under Articles 5 and 8 of the European Convention on Human Rights ("**ECHR**"). The breaches arise from

This Petition was presented by KSG Attorneys-at-Law, Attorneys for the Petitioner, whose address for service is 4th Floor Harbour Centre, 42 North Church Street, Grand Cayman, KY1-1107, P.O. Box 2255.

decisions made by employees or agents of the Second Respondent to require the Petitioner to submit to mandatory isolation and polymerase chain reaction (“**PCR**”) testing in the context of the COVID-19 pandemic.

6. Pursuant to section 27 of the Bill of Rights, the Petitioner may seek such “*relief or remedy or [...] order*” that the Court considers just and appropriate within the scope of its powers. The Petitioner seeks the following relief:
 - 6.1. A quashing of the Second Respondent’s decisions or acts of the 6th, 8th, 9th and 14th February 2022 that directed that the Petitioner shall be kept in isolation in his home until he provided a negative PCR test (“**the Decisions**”);
 - 6.2. A declaration that the Petitioner’s rights have been breached by the Decisions and that they are consequently unlawful;
 - 6.3. A declaration that the policy dated the 2nd February 2022 that guided the Second Respondent’s Decisions results in a breach of the Petitioner’s rights and is unlawful and/or irrational;
 - 6.4. A declaration that it was a breach of natural justice to require the Petitioner to submit to a further test following the 5th February 2022 test, due to a failure to give sufficient reasons on the 6th February 2022;
 - 6.5. Damages for the injury and loss sustained by the Petitioner as a consequence of the Decisions;
 - 6.6. Costs;
 - 6.7. Further and other relief.

FACTUAL AND LEGAL BACKGROUND

The Policy

7. A Medical Officer of Health (“**MOH**”) has a discretion to direct an individual to isolate, pursuant to section 23 of the Public Health Act (2021 Revision). Section 23 states:

“Control of patients and contacts

23. (1) If, in the opinion of a Medical Officer of Health, any person is suffering or reasonably suspected of suffering from any notifiable disease, the Officer may direct —

- (a) that the person shall be kept in isolation in that person’s home; or
- (b) that the person shall be removed to a hospital or other place.”

8. “Notifiable disease” includes COVID-19 by virtue of section 2 and the Schedule to the Public Health Act. A “medical officer of health” under section 2 means any person appointed pursuant to section 3.

9. On the 2nd February 2022, the Second Respondent issued guidelines for potential release from isolation for persons who had been subject to a direction under section 23 of the Public Health Act. These guidelines were published on the Second Respondent’s website and titled “*Public Health issues isolation release platform & retesting criteria for positives*” (“**the Policy**”). The Policy for release is based on the Cycle Threshold value (“**Ct Value**”) that is produced by a PCR test. It provides for three categories of test, and different consequences depending on the category bracket the tested individual falls into. The categories are as follows:

CT VALUE	CONSEQUENCE
32 or over	<p>The individual can request early release from Public Health by submitting an exit PCR test with all Ct Values of 32 or over where they:</p> <ol style="list-style-type: none"> 1. Complete a minimum isolation period of seven days (vaccinated people) or 10 days (unvaccinated people and unvaccinated children based on the vaccination status of their parent);

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	2. Have no symptoms for at least 24 hours (they may still have a dry cough, loss of smell and taste, runny nose).
28 – 31.9	The individual can contact Flu Hotline for further assessment.
27.9 and under	<p>The individual must follow the retesting guidelines after completing the applicable isolation period:</p> <ol style="list-style-type: none"> 1. Repeat PCR testing two days after the last PCR test where the exit test showed a Ct value of 25 – 27.9; 2. Repeat PCR testing four days after the last PCR test where the exit test showed a Ct value of 20 – 24.9; 3. Call Flu Hotline for a retesting date where the Ct value is under 20.

Isolation of the Petitioner

10. On the 26th January 2022, the Petitioner displayed symptoms consistent with COVID-19. He took a lateral flow test, which rendered a positive result. This counted as Day 0.

11. By the 27th January 2022, the Petitioner became asymptomatic of COVID-19.

12. On the 28th January 2022 at 1239, the Petitioner undertook a PCR test. The result of that test was positive. It produced results showing Ct Values of 23.79 (N1), 23.58 (E-SarbecoV) and “Not Tested” (ORF1ab). On the basis of this test, the Second Respondent directed the Petitioner to isolate in his home.

13. The Petitioner was required to isolate for minimum period of six days and was eligible for an exit PCR test on Day 7 (i.e. the 2nd February 2022) due to his father

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being vaccinated. This was on the basis of the Policy as issued on the 2nd February 2022.

14. On the 2nd February 2022 at 0700, the Petitioner undertook a further PCR test. The result was again positive. It produced Ct Values of 22.31 (N), 22.50 (ORF1ab), and "Negative" (S).
15. On the 5th February 2022 at 0700, The Petitioner undertook a further PCR test. The result was again positive. It produced Ct Values of 28.87 (N), 28.96 (ORF1ab), and "Negative" (S) ("**the 5th February 2022 test**"). It therefore fell in the middle bracket of the Policy and allowed the Petitioner to seek further assessment from Flu Hotline.
16. The Petitioner's mother, Dione Anglin, contacted Flu Hotline. On the 6th February 2022, Ms Anglin was told that the Petitioner would need to submit to a further test. No sufficient reason was given explaining that decision. Requiring the Petitioner to submit to a further test was in breach of his rights ("**the 6th February 2022 decision / The First Decision**").
17. On the 7th February 2022 at 1536, the Petitioner undertook a further PCR test. The result was again positive. It produced Ct Values of 26.60 (N), 26.69 (ORF1ab), and "Negative" (S). On the 8th February 2022, the Second Respondent provided the results to the Petitioner and directed he continue to isolate in breach of his constitutional rights ("**the 8th February 2022 decision / The Second Decision**").
18. The Petitioner has suffered both mental and physical harm as a result of taking the PCR tests described above.

Correspondence between the Petitioner's mother and the MOH

19. On the 8th February 2022 at 1429, Dione Anglin wrote by email to Dr Samuel Williams-Rodriguez, a MOH and employee of the Second Respondent. In that email Ms Anglin did the following:

- 19.1. Requested the reason why the Petitioner had not been released following the 5th February 2022 test;
- 19.2. Stated that the PCR test can only identify the presence of viral RNA in the sample and does not indicate the presence of infectious virus. She further stated that the United States of America Centre for Disease Control (“**CDC**”) provides guidance that people are only infectious for five days unless symptomatic;
- 19.3. Requested confirmation of which guidelines the Cayman Islands are following, and whether it was following the guidelines issued by the CDC or by the United Kingdom Health Security Agency (“**UKHSA**”);
- 19.4. Requested the reason why the Petitioner should remain in isolation when the PCR test is known to render positive results for 12 weeks after an initial positive result and in light of its inability to determine whether an individual is infectious.

20. In a response on the 9th February 2022 at 0741, Dr Williams-Rodriguez answered in the following manner:

- 20.1. As to 19.1 above, he stated “[a]utomatic release for individuals in isolation is only applicable when the individual has completed the isolation period, are asymptomatic for at least 23 hours and the **CT value is 32 or over**; on the 5th of February, 2022 the required CT value was not met” (emphasis in original). No reason was given as to why further isolation was required despite the Petitioner being in the middle bracket of the Policy. The Petitioner alleges that this was a breach of natural justice;
- 20.2. As to 19.2 above, he stated that “Public health is aware of this” in response to Ms Anglin’s assertion that the PCR test does not indicate the presence of infectious virus. He further stated that “[t]he PH department in the Cayman Islands is very familiar with international recommendations and approaches from different countries, however, from the beginning of the Pandemic, we have been taking our own decision on the particularities of the Cayman Islands, this approach will continue”.

- 20.3. As to 19.3 above, he repeated his second sentence, quoted above.
- 20.4. As to 19.4 above, he stated "*Tyler can be retested today at the Truman Bodden Complex from 7-11am, once resulted, we will decide based on his CT values*".
21. Through this email response, the Second Respondent failed to act by failing to approve the Petitioner's release, in breach of his rights ("**the 9th February 2022 decision / the Third Decision**").
22. At the date of the Petition, the Petitioner remains subject to isolation in compliance with the direction of the Second Respondent.
23. On the 11th February 2022, the Petitioner's attorneys requested that the Petitioner be released. On the 14th February 2022, the Second Respondent refused to release the Petitioner unless he submitted to a further PCR test ("**the 14th February 2022 decision / the Fourth Decision**").

BREACH OF THE PETITIONER'S RIGHTS

The rights

24. Under the Bill of Rights and the ECHR, the Petitioner is guaranteed the following human rights:
- 24.1. Personal liberty (section 5 of the Bill of Rights / Article 5 ECHR);
- 24.2. Private and family life (section 9 / Article 8 ECHR);
- 24.3. Movement (section 13);
- 24.4. Non-discrimination (section 16);
- 24.5. Education (section 20).

25. Those rights are guaranteed pursuant to section 1 of the Bill of Rights. They apply in this case because the Second Respondent and its employees/agents are public officials or bodies pursuant to section 28 of the Bill of Rights.
26. Acts of public officials may deprive a person of the right to liberty under section 5 / Article 5 ECHR where it is done in an accordance with a procedure prescribed by law for the purpose of preventing the spread of an infectious or contagious disease.
27. Acts of public officials may contravene sections 9 / Article 8 ECHR, 13, 16 and 20 only to the extent that the act is reasonably justifiable in a democratic society in the interests of (*inter alia*) public safety, public order or public health, or for the purposes of protecting the rights and freedoms of other persons.
28. Section 19 requires that, “[a]ll decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair”.
29. Section 24 states that “[i]t is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights [...]”.

The breaches

30. The Decisions and the Policy were not lawful or reasonably justifiable in a democratic society – and were consequently in breach of the Petitioner’s rights – for the following reasons (without prejudice to further reasons that will be shown in due course):
- 30.1. The weight of the evidence demonstrates that the majority of individuals who have contracted COVID-19 pose no more than a minor risk of transmitting the virus to others after 7 days when they are asymptomatic (“**the contagious period**”) (with some data showing the contagious period being shorter). It was therefore not justifiable for the Second Respondent to decide to continue to direct the Petitioner to isolate after the 2nd February 2022, after the Petitioner had completed 7 days isolation and was asymptomatic. The risk that he posed to others in the community, if any, did not justify his continued detention and the consequential contravention of his human rights.

- 30.2. The PCR test cannot distinguish whether an individual is contagious. This was acknowledged by the Second Respondent in the 9th February 2022 email response from Dr Williams-Rodriguez. The PCR test regularly returns a positive test for individuals who are non-contagious or recovered. This effect can last for more than 100 days. It was therefore not justifiable for the Second Respondent to decide to continue to require that the Petitioner supply a PCR test in line with the Policy and as a condition of release, because of the likelihood of a meaningless result.
- 30.3. The Decisions and the Policy rely on Ct values to determine whether an individual should be released. The weight of the evidence shows that this is inappropriate.
- 30.4. The Decisions and the Policy place insufficient weight on the fact that COVID-19 is present and prevalent in the community with approximately one in twenty people in the Cayman Islands carrying the virus at the date of the Petition. There is the obvious likelihood that, when contagious, those individuals will pass the virus to others. In those circumstances, the Decisions and the Policy result in disproportionate and unjustifiable contraventions of the Petitioner's rights.
- 30.5. The Decisions and the Policy placed insufficient weight on the fact that a large majority of the Cayman Islands population has received at least one dose of a COVID-19 vaccine. As of the 9th February 2022, 83.6% had received one dose, 81% had received two doses, and 29% had received a third booster dose. Vaccinated people are unlikely to suffer serious symptoms, if any, on contracting COVID-19. Vaccinated people are less likely to transmit the virus to others. In those circumstances, the Decisions to continue to direct that the Petitioner isolate, particularly after the contagious period had passed, resulted in unjustifiable contraventions of the Petitioner's rights.
- 30.6. The Decisions and the Policy placed insufficient weight on the fact that those recovered from COVID-19 are likely to develop a level of immunity. As of the 9th February 2022, there had been a total of 17,687 COVID-19 cases in the Cayman Islands.

31. By virtue of the above, the Second Respondent's Decisions were not lawful, rational or proportionate and were therefore unlawful under section 19 of the Bill of Rights.

32. Further, by virtue of the above, the Second Respondent's Decisions were unlawful pursuant to section 24 of the Bill of Rights.

RELIEF

33. Your Petitioner therefore humbly prays for the following relief pursuant to section 27 of the Bill of Rights:

33.1. A quashing of the Second Respondent's decisions or acts of the 6th, 8th, 9th and 14th February 2022 that directed that the Petitioner shall be kept in isolation in his home until he provided a negative PCR test ("**the Decisions**");

33.2. A declaration that the Petitioner's rights have been breached by the Decisions and that they are consequently unlawful;

33.3. A declaration that the Policy dated the 2nd February 2022 that guided the Second Respondent's Decisions results in a breach of the Petitioner's rights and is unlawful and/or irrational;

33.4. A declaration that it was a breach of natural justice to require the Petitioner to submit to a further test following the 5th February 2022 test, due to a failure to give sufficient reasons on the 6th February 2022;

33.5. Damages for the injury and loss sustained by the Petitioner as a consequence of the Decisions;

33.6. Costs;

33.7. Such further or other relief as the Court thinks fit or that counsel requests.

Dated this 17th day of February 2022.



KSG

Attorneys for the Petitioner

AND To:

1. The Attorney General of the Cayman Islands
2. Cayman Islands Health Services Authority