

# Justice in Canada

With help and advice from Chris Weisdorf, Melani Fernando successfully defended her right of bodily autonomy by rejecting the insertion of a nasal swab for a PCR "test" and winning her appeal.



JAMES ROGUSKI

AUG 04, 2024

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## ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

METHTHA FERNANDO

R U L I N G

BEFORE THE HONOURABLE JUSTICE PAUL MONAHAN  
on June 26<sup>th</sup>, 2024 at BRAMPTON, Ontario

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**R. v. Fernando, 2024 ONCJ 336****Excerpts:**

*Ms. Fernando took an airplane flight to her home in Mississauga, arriving at Pearson Airport on April 9, 2022. She was apparently vaccinated, but she refused the COVID test, which was randomly selected to be performed on her.*

*Ms. Fernando was convicted at trial of failing to comply with an order under Section 58 of the Quarantine Act (the "Act") and fined \$5,000 with additional charges, taking it to a fine of \$6,255.*

*Ms. Fernando appealed to this Court; she was assisted in her appeal by a non-lawyer, Mr. Weisdorf, who was helpful to her and to the Court.*

*The defence raised an argument before the Justice of the Peace and before me which has merit. The Justice of the Peace did not address this argument. The argument, simply put, is that the Act did not authorize a screening officer to use a screening test which involved the entry into the traveller's body of an instrument or other foreign body.*

*In my view, a nasal swab is “an instrument” or “foreign body.” In my view, the Quarantine Act did not permit a screening officer in this case, Mr. Roxas, to require Ms. Fernando to be tested at the airport by insertion into her nasal cavity of a nasal swab.*

*I do decide that the nasal swab test, which the screening officer in this case required or demanded Ms. Fernando submit to, was an unlawful requirement or demand. Ms. Fernando’s refusal to comply with the requirement or demand was lawful on her part.*

*Because the requirement or demand made of her by the screening officer was not lawful, Ms. Fernando should not have been found guilty by the Justice of the Peace.*

*I am reversing the Justice of the Peace’s decision and entering a finding of not guilty.*

<https://canlii.ca/t/k5q3t>

## QUARANTINE ACT

**14. (1)** Any qualified person authorized by the Minister may, to determine whether a traveller has a communicable disease or symptoms of one, use any screening technology authorized by the Minister that **does not involve the entry into the traveller’s body of any instrument or other foreign body.**

[https://laws.justice.gc.ca/eng/AnnualStatutes/2005\\_20/page-1.html#h-6](https://laws.justice.gc.ca/eng/AnnualStatutes/2005_20/page-1.html#h-6)

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