

2020 01G 2342

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN: KIMBERLEY TAYLOR **FIRST APPLICANT**

AND: CANADIAN CIVIL LIBERTIES ASSOCIATION **SECOND APPLICANT**

AND: HER MAJESTY IN RIGHT OF **FIRST RESPONDENT**
NEWFOUNDLAND AND LABRADOR

AND: JANICE FITZGERALD, CHIEF MEDICAL **SECOND RESPONDENT**
OFFICER OF HEALTH

**ORIGINATING APPLICATION
(INTER PARTIES)**

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IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN: KIMBERLEY TAYLOR FIRST APPLICANT

AND: CANADIAN CIVIL LIBERTIES ASSOCIATION SECOND APPLICANT

AND: HER MAJESTY IN RIGHT OF FIRST RESPONDENT
NEWFOUNDLAND AND LABRADOR

AND: JANICE FITZGERALD, CHIEF MEDICAL SECOND RESPONDENT
OFFICER OF HEALTH

ORIGINATING APPLICATION
(INTER PARTIES)

BEFORE THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR,
GENERAL DIVISION OR ONE OF THE HONOURABLE JUSTICES THEREOF:

(1) The Parties

The Application of Kimberley Taylor and the Canadian Civil Liberties Association, the Applicants herein, says:

1. The Applicant Kim Taylor, resides in Halifax, Nova Scotia with her spouse and two children (ages 4 and 7). The First Applicant was born and raised in Kilbride, NL where she grew up with her parents and younger sister. On May 5, 2020 Ms. Taylor's 75 year old mother suddenly died in Kilbride. The day before the Chief Medical Officer had issued a Special Measures Order (Amendment No. 11) which banned certain individuals from entering the province of Newfoundland and Labrador. Although Ms. Taylor asked for an exemption to return to her home province for her mother's funeral her request was denied. The unfortunate circumstances which led to this present Application will be reviewed in more detail herein and in Ms. Taylor's Affidavit dated May 19, 2020, which is attached to this Application as Schedule "A". [Tab 2]
2. The Second Applicant, the Canadian Civil Liberties Association, herein after referred to as the CCLA, is an independent, non-profit NGO, dedicated to actively defending and promoting the recognition of fundamental human rights as enshrined in the *Constitution Act, 1982* ("*the Constitution*"). The CCLA has made vital contributions to *Charter* jurisprudence in a variety of areas including those at issue in this Application namely s.6, s.7 s.8 and s.9. Since its inception in 1964, it has been holding governments accountable by ensuring those rights and freedoms are fostered and observed and that the rule of law is upheld. It advocates on behalf of all people in Canada to ensure that the critical balance between civil liberties and the competing public and private interests is maintained.
3. The CCLA has been involved in litigation at every level of court in the country involving many important developments in the areas of constitutional rights and has acted as a public interest litigant in numerous cases where the scope of the matter at issue extended beyond the rights of one particular individual.
4. In furtherance of its mandate and in particular relation to the COVID 19 pandemic, the CCLA, as co-applicant, has already brought an application in the Ontario Superior Court of Justice against the City of Toronto and Province of Ontario challenging the constitutionality of the Toronto Shelter Standards and the Toronto 24 Hour Respite Site standards. In a separate application in the Federal Court, the CCLA as co-applicant, has

challenged the government's handling of the COVID 19 pandemic in federal correctional institutions.

5. For a more detailed account of the CCLA's litigation history and its work specifically related to governments' response to COVID 19, see the Affidavit of Cara Zwibel, Director, Fundamental Freedoms Program, attached hereto as Schedule "B". [Tab 3]
6. The First Respondent is Her Majesty in right of Newfoundland and Labrador who, at all times material to this present application, was represented by Dr. John Haggie, the Minister of Health and Community Services.
7. The Second Respondent is Dr. Janice Fitzgerald, a medical doctor who, at all times relevant to this present application, was the Chief Medical Officer of Health for the Province of NL.

(2) Legislation And Special Measures Orders

8. On March 18, 2020 the Minister of Health declared a public health emergency as a result of the COVID-19 pandemic. The public health emergency was declared pursuant to s. 28 of the *Public Health Protection and Promotion Act*, SNL 2018, Chapter P-37.3, (hereinafter referred to as the *PHPP Act*) and was in effect for a period of 14 days.
9. On April 29, 2020, the Minister of Health made a public health emergency extension declaration, effective May 2, 2020 which was also in effect for a period of 14 days. It appears that the declaration had been lapsed for one month.
10. On May 14, 2020, the Minister of Health made a second public health emergency extension declaration, effective May 17, 2020 which was also in effect for a period of 14 days.

A copy of the *Public Health Protection and Promotion Act* is attached hereto as Schedule C [Tab 4]

Copies of the Public Health Emergency Declaration and Extensions are attached hereto as Schedule D [Tab 5]

11. Of particular relevance to this present application is s.13 of the *Public Health Protection and Promotion Act* which states:

Restrictions on rights and freedoms

13. Where an individual's rights or freedoms are restricted as a result of the exercise of a power or the performance of a duty under this Act, the regulations or an order made under this Act or the regulations, the restriction shall be no greater than is reasonably required in the circumstances to respond to a communicable disease, health hazard, public health emergency or contravention of this Act, the regulations or an order made under this Act or the regulations.

12. Pursuant to s.28 of the *PHPPA*, the Chief Medical Officer of Health made several Special Measures Orders between March 23 - April 29, 2020. The Travel Ban Order which is the key order for the purpose of the First Respondent's Application came into effect on May 4, 2020.
13. On May 5, 2020, the Chief Medical Officer of Health made another Special Measures Order identifying individuals who are exemption from the Travel Ban Order of May 4, 2020.

Special Measures Order (Amendment No. 11) dated April 29, 2020 (hereinafter referred to as the Travel Ban Order), attached hereto as Schedule E. [Tab 6]

Special Measures Order (Travel Exemption Order dated May 5, 2020 (hereinafter referred to as the Exemption Order), attached hereto as Schedule F. [Tab7]

14. The following are key sections of the Travel Ban Order:

Pursuant to section 28 of the Public Health Protection and Promotion Act, I, Dr. Janice Fitzgerald, Chief Medical Officer of Health HEREBY ORDER:

1. *For the purpose of this Order, "resident" means an individual who:*
 - a. *is lawfully entitled to be or to remain in Canada;*
 - b. *makes his or her home in the province; and*
 - c. *is ordinarily present in the province,*

but does not include a tourist, transient or visitor to the province.
2. *All individuals are prohibited from entering Newfoundland and Labrador, except for the following:*
 - a. *Residents of Newfoundland and Labrador;*
 - b. *Asymptomatic workers and individuals who are subject to the Updated Exemption Order effective April 22, 2020; and*
 - c. *Individuals who have been permitted entry to the province in extenuating circumstances, as approved in advance by the Chief Medical Officer of Health*

IT IS FURTHER ORDERED THAT:

1. *this order is effective as of May 4, 2020.*
 2. *All other Special Measures Orders remain in full force and effect.*
15. Although there is a process for the granting of exceptions to the Travel Ban there is no apparent authority in the *Public Health Protection and Promotion Act* for the granting of the same. Furthermore, the Applicants are not aware of who decides to grant the exemptions or the criteria to be employed. The Applicants are not aware of how many

Travel Exemptions have been granted or denied to date, nor does this information appear to be publicly available. However, it is relevant information which would be in the possession of the Respondents.

16. While the Travel Ban Order outlines a process for reconsideration of an Order made by the Chief Medical Officer, this same wording is contained in all of the Special Measures Orders. Section 47(1) of the *Public Health Protection and Promotion Act* specifically states that "An order or decision made, confirmed or varied by the Chief Medical Officer of Health under this Act or the regulations is final and binding."

(3) The First Applicant – Kimberley Taylor

(i) Family Background

17. As previously stated the First Applicant, Kim Taylor, lives in Halifax, Nova Scotia with her spouse and two children. The following facts outlined in Ms. Taylor's Affidavit are particularly relevant to this present Application:
- (1) Ms. Taylor moved to Halifax at the end of 1996. For the 24 years that she has been in Halifax Ms. Taylor has visited her family in Newfoundland and Labrador approximately 1 – 2 times per year. Her parents, Eileen and Patrick, were getting older and she spent as much time with them as she could;
 - (2) Since the birth of her children Ms. Taylor has brought her children to Kilbride to visit her parents every year and they would stay for varying lengths of time, from 1-3 weeks. On several occasions while in Newfoundland and Labrador Ms. Taylor, her parents and her children also visited her extended family in the Clarendville area;
 - (3) Ms. Taylor spoke to her parents, and her sister, especially her mother, on a daily basis and sometimes several times per day;
 - (4) Ms. Taylor's parents were getting older so she kept in close contact with them. As of May 4, 2020 her mother was 75 years old and her father was

77. At the time of her mother's death her parents had been married for almost 55 years. Ms. Taylor is also very close to her sister, Nicole, who is 6 years younger than her and they spoke daily on the telephone. Her sister lives in the Goulds and she was also very close to her parents.

(ii) The Events of May 5 - 8, 2020

18. Although Ms. Taylor's mother had serious mobility issues and an underlying heart condition her death was sudden and unexpected. Late on the evening of Tuesday, May 5, 2020 the First Applicant received a call that her mother was unresponsive and the paramedics were at her parents' residence. In fact, Mrs. Taylor died on the evening of May 5. The Applicant was shocked as she had spoken to her mother during the previous days and there was no indication that she was in danger of dying.
19. The First Applicant immediately looked at making travel arrangements to return to Newfoundland and Labrador but she learned that night that the Travel Ban Order earlier referred to came into effect on the previous day. Since the Applicant wanted to ensure compliance with the Travel Ban she immediately attempted to find out what she had to do to return to Newfoundland and Labrador.
20. The First Applicant attempted to call a phone number listed on the COVID-19 website but out-of-province calls would not go through. Her sister also phoned this same telephone number but could not get an answer and left a message. The First Applicant then sent an e-mail early on Wednesday morning to an e-mail address listed on the government's COVID-19 website. Later that same day the Applicant sent a second e-mail, not having received an answer to her first e-mail.
A copy of these emails are attached hereto as exhibits a and b to Schedule A [Tab 2]
21. In anticipation of hearing from someone in the Chief Medical Officer's office the Applicant took the following steps to facilitate her return for her mother's burial (she knew and accepted that the burial would only involve her, her father and her sister):

- (1) the First Applicant arranged with her father and sister that she would stay in her parents' basement apartment for the 14 day self-isolation period (there is a separate entrance to the basement apartment);
 - (2) since her parents had two cars her sister agreed to drive one car to the airport and leave it there for the First Applicant to drive directly to her parents' basement apartment;
 - (3) her sister agreed to buy groceries and other necessities and put them in the basement apartment so that the First Applicant would have the necessities needed without having to leave the apartment;
 - (4) the funeral director was prepared to hold her mother's body until the First Applicant's self-isolation period ended;
 - (5) the First Applicant's spouse arranged to take three weeks off work to look after their two children in Halifax while the First Applicant was in Newfoundland;
 - (6) it is important to note that the First Applicant had been working remotely from home since March 23, 2020 and observing the isolation rules in Halifax.
22. After the First Applicant sent her request for a travel exemption her sister spoke to a government official and was informed there was numerous requests for travel exemptions (in the daily COVID-19 media briefing on that Wednesday it was indicated that there were over 500 requests for exemptions at that time) and it would be 48 hours before they could get back to the First Applicant with a decision.
23. On Friday, May 8, 2020 the First Applicant received an e-mail which, although it passed on condolences, denied her application. Needless to say the First Applicant was very upset and the decision was made to have her mother cremated as soon as possible. The First Applicant describes the decision of the Government of Newfoundland and Labrador as "beyond cruel". Not only was she denied the opportunity to grieve with her elderly father, who had just lost his wife of 55 years, but she was not given the opportunity to say goodbye to her mother.

A copy of this e-mail is attached hereto exhibit c of Schedule A [Tab 2]

24. It is the First Applicant's position that this tragic episode has been compounded by the arbitrary decision-making process utilized by the Chief Medical Officer and the Minister of Health, as will be more fully outlined in this Application.

(4) S. 6 of the Charter – Mobility Rights

25. Section 6 of the *Charter* states:

MOBILITY RIGHTS

Mobility of Citizens

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

Rights to move and gain livelihood

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

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

26. It is the First Applicant's position that s. 6 of the *Charter* gives her, and all Canadian citizens and permanent residents, the right to move freely between provinces in Canada. The First Applicant's position is that the denial of her right to travel to her home province for her mother's burial has resulted in a breach of s. 6 of the *Charter*. Furthermore, the First Applicant suggests that the mobility rights of other Canadians are breached by the Travel Ban Order.
27. The First Applicant is not arguing that the Chief Medical Officer and the Minister of Health cannot impose restrictions to protect the people of the province from COVID-19 such as the requirements for social distancing, the closure of schools and businesses and the 14 day self-isolation rule. However, as outlined in s. 13 of the *PHPP Act*, "the restriction shall be no greater than is reasonably required in the circumstances to respond to a communicable disease".
28. On May 5, 2020 the Chief Medical Officer of Health issued an Exemption to the Travel Ban which allowed certain classes of people to return to Newfoundland and Labrador. Although an individual could visit a family member who was critically ill no exemption was allowed for returning to the province following the death of a family member.
- Special Measures Order (Travel Exemption Order) dated May 5, 2020,
attached hereto as Schedule F [Tab 7]
29. It is the First Applicant's position that the Travel Ban violates her s. 6 *Charter* right but also that it cannot meet the reasonable restriction criteria outlined in s. 13 of the *PHPP Act*. There is no evidence that the mandatory self-isolation period has not worked and the First Applicant is not aware if tickets have been issued for failure to comply with the self-isolation requirements. To the best of the First Applicant's knowledge this information would be available to the Respondents but is not publicly available.
30. Even before the Travel Exemption Order of May 5, 2020 media reports indicated that workers from Quebec had been granted exemptions to travel to Newfoundland and

Labrador to work on construction sites and residents of Newfoundland and Labrador were regularly travelling to the province from work sites in Alberta. Also, at a minimum, hundreds of exemptions have been granted to allow individuals to enter the province. The Applicants suspect that the granting of exemptions is the rule rather than the exception. In fact, with so many exemptions being granted it begs the question of why a Travel Ban is necessary at all, especially with the 14 day self-isolation requirement in effect.

31. The following statistics, outlined by the First and Second Defendants in their daily media updates, make the reasoning behind the Travel Ban even more confounding. As of May 15, 2020:

- (1) in the previous ten days there had been no new cases of COVID-19;
- (2) the total number of reported cases in Newfoundland and Labrador was 260;
- (3) of the total caseload 249 people had recovered, there had been 3 deaths, the number of active cases was 8;
- (4) Sunday, May 17, 2020 was the 28th day since April 15 in which no new cases had been reported.

CBC Website "N.L. broadens testing criteria while marking full week with no new COVID-19 cases".

32. The statistics referred to in the previous paragraph indicate that Newfoundland and Labrador has responded well to the COVID-19 crisis. However, it defies logic to assert that the containment of the virus relates to the Travel Ban when individuals are travelling into the Province from Quebec and Alberta and hundreds of exemptions to the Travel Ban Order have been granted. In fact, logic dictates that it is the 14 day self-isolation period and the adherence to the legitimate orders of the Second Respondent and social distancing which has allowed success in the fight against the virus. With or without the Travel Ban Order people are still entering the Province of Newfoundland and Labrador from other parts of Canada, including provinces that have seen some of the heaviest rates of infection in Canada

33. The First Applicant's position can be summarized as follows:
- (1) there is no constitutional authority which allows the Province to impose the Travel Ban Order and the Travel Ban Order and is therefore *ultra vires* the Province;
 - (2) even if such constitutional power exists the Travel Ban Order does not comply with s. 13 of the *PHPP Act*;
 - (3) if there is compliance with s. 13 of the *PHPP Act* the Travel Ban Order violates the First Applicant's mobility rights guaranteed by s. 6 of the *Charter*;
 - (4) the breach of s. 6 cannot be justified under s. 1 of the *Charter*.
34. Therefore, the First Applicant seeks a declaration that her *Charter* rights under s. 6 of the *Charter* have been violated and the Travel Ban Order is unconstitutional and of no force and effect.

(5) The Position of the Second Applicant, the CCLA

CCLA as Public Interest Litigants

35. The CCLA has commenced this Application as a public interest litigant, in conjunction with the individual Applicant, Ms. Kimberley Taylor. As a result of its expertise, special knowledge and perspective regarding constitutional rights and government accountability as they relate to the Application, the CCLA will address issues not likely to be canvassed by a single individual.
36. The CCLA has a genuine interest in the issues raised in this Application as they are directly connected to the organization's mandate. CCLA has developed a substantial expertise in relation to the issues raised in the Application through its advocacy, public education and research.
37. This case raises serious *Charter* issues about which the CCLA has demonstrated its strong engagement and interest.

38. The CCLA brings this case as a systemic challenge to the impugned provisions, which would be difficult, if not impossible for an individual litigant to do. Whereas the First Applicant seeks a remedy in relation to a s.6 Charter violation, the Second Applicant's interests are broader in scope but involve the same offending conduct by the government; namely, the government restricting *Charter* protected rights of individuals pursuant to s.27 and s.28 of the *PHPPA*. Both Applicants seek a ruling as to the acceptable parameters of state intervention during a declaration of a health emergency.
39. The Application is a reasonable and effective manner of bringing the issues of public importance forward for adjudication.

(5) (a) Scope of the CCLA's interest in the Application

40. This Application is in relation to the broadened police enforcement powers introduced through Bill 38, which amended s.28 and s.50 of *PHPPA* on May 5, 2020, and in relation to Special Measures Orders (Travel Ban) made pursuant to s.27 and s.28(h) of the (*PHPPA*).
41. The CCLA is seeking to challenge the constitutionality of the 'Travel Ban imposed by Special Measure and the extraordinary powers of search, detention and removal from the Province created by the amendments to the *PHPPA*.

The Position of the CCLA

42. As a long time defender of the *Charter*, rule of law and government accountability, the CCLA has a particular interest in how governments across the country are responding to the public health crisis that COVID 19 presents. The CCLA is actively monitoring and advocating for rights-centred responses to the COVID 19 pandemic by governments and state agencies. As such, the CCLA has been following the actions of the Government of Newfoundland and Labrador through the media and the government's COVID 19 news releases regarding public health orders, special measures order and legislative amendments to the *PHPPA*.

Background Facts:

43. On May 5th, 2020 Bill 38 passed in the House of Assembly without robust debate. Bill 38 conveyed to the police, broad enforcement powers of search, detention and removal from Newfoundland and Labrador.

Bill 38 An Act to Amend the Public Health Protection and Promotion Act Schedule G

[Tab 8]

(Hansard, May 5, 2020 House of Assembly Proceedings, Vol. XLIX No. 35, page 1855-1870 (Attached hereto at Schedule H Tab 9))

44. On May 11, 2020, Michael Bryant, the CCLA's Executive Director and General Counsel, and Cara Zwibel, Director, Fundamental Freedoms Program, coauthored a letter to the Minister of Justice and Attorney General wherein they outline their concerns over the amendments and the Special Measures Orders. The CCLA raised specific concerns over whether the amendments and the Special Measures Orders were consistent with the division of power and the province's jurisdiction under the *Constitution Act, 1867*. They highlighted concerns over whether the "travel ban" was contrary to the mobility rights enshrined in s.6 of the *Charter*. They further questioned whether the amendments breached s.8 and s.9 of the *Charter* and whether they could be saved by s.1. The CCLA urged reconsideration of the Special Measures Order and the amendments. The CCLA also tried to open a dialogue with the Minister, requesting an opportunity to discuss its concerns more fully. (Attached hereto at Schedule I Tab 10).
45. In a letter dated May 14 but received on May 15, 2020, the Minister of Justice and Attorney General replied to the CCLA and dismissed its concerns. (Attached hereto at Schedule I Tab 10).
46. The Minister of Justice and Attorney General's unwillingness to engage in discussion about the CCLA's concerns reiterated the comments made publicly by Dr. Haggie, the Minister of Health, during the May 6th media briefing wherein he stated "If any body feels that their

rights have been abridged in any way they have the right and the ability to go to court and challenge it". Minister Haggie repeated this suggestion on May 11, 2020 when asked directly about the CCLA's concerns. (CBC article, May 11, 2020, Attached hereto at Schedule J, Tab 11).

47. On May 14, 2020, Cara Zwibel wrote to the Second Respondent, Dr. Janice Fitzgerald, outlining the CCLA's concerns over the Special Measures Orders and urging reconsideration. Requests were made for information relating to the rationale, purpose, necessity and justification of the amendments and Special Measures Orders. (Attached hereto at Schedule K Tab12). As of the date of filing, no response has been received.

Bill 38 Amendments to Police Power

48. Bill 38 amended the *PHPPA* to add the following section and give peace officers new enforcement powers which read as follows:

Enforcement of measures

28.1 (1) While a measure taken by the Chief Medical Officer of Health under subsection 28(1) is in effect, the Minister of Justice and Public Safety may, upon the request of and following consultation with the minister, authorize a peace officer to do one or more of the following:

- (a) locate an individual who is in contravention of the measure;
- (b) detain an individual who is in contravention of the measure;
- (c) convey an individual who is in contravention of the measure to a specified location, including a point of entry to the province; and
- (d) provide the necessary assistance to ensure compliance with the measure.

(2) A peace officer who detains or conveys an individual under subsection (1) shall promptly inform the individual of

- (a) the reasons for the detention or conveyance;

- (b) the individual's right to retain and instruct counsel without delay; and
- (c) the location to which the individual is being taken.

49. Further, section 50(1) was amended as follows:

Powers of inspectors

50. (1) An inspector may, at all reasonable times and without a warrant, for the purpose of administering or determining compliance with this Act or the regulations, a code of practice or a measure taken or an order made under this Act or the regulations or to investigate a communicable disease or health hazard, do one or more of the following:

- (a) inspect or examine premises, processes, books and records the inspector may consider relevant;
- (b) enter any premises;
- (c) take samples, conduct tests and make copies, extracts, photographs or videos the inspector considers necessary; or
- (d) require a person to
 - (i) give the inspector all reasonable assistance, including the production of books and records as requested by the inspector and to answer all questions relating to the administration or enforcement of this Act or the regulations, a code of practice or a measure taken or an order made under this Act or the regulations and, for that purpose, require a person to stop a motor vehicle or attend at a premises with the inspector, and
 - (ii) make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Notwithstanding subsection (1), an inspector shall not enter a dwelling house without the consent of an occupant except under the authority of a warrant issued under section 52.

5(b) The Application with Respect to s.8 and s.9

50. As regards s.8 and s.9, the changes made through Bill 38 extend police power beyond their constitutional limits. They violate the right to be free from unreasonable search and seizure and the right to be free from arbitrary detention.
51. Section 50(1) authorizes warrantless entry in to a premises, which includes a residence or car.
52. Section 28.1 authorizes search and detention without the requisite constitutional statutory minimum standards of reasonable and probably grounds. It allows for the removal of a person from Newfoundland without a hearing.
53. While the discussion in the House of Assembly suggest that this legislation was drafted as a direct result of concerns from police agencies over enforcing the Travel Ban Order (Hansard, Tab 9, page 1856) there is nothing in the legislation that confines these powers to those subject to the travel ban. It speaks to measures made under subsection 28(1), not a specific Special Measures Order. To that end, it allows for the possibility that a resident of Newfoundland and Labrador can be removed from the province if she is thought to be violating any Special Measures Order. Further, it allows for someone deemed (by the Minister of Health in consultation with the Minister of Justice) to be in breach of any Special Measure to be searched and detained.
54. The amendments grant the police powers that extend far beyond the powers already given to police in the *Criminal Code* and the *Provincial Offences Act*.
55. Further, because these powers are related to breach of a measure, and not an Order made pursuant to the *PHPPA*, they are not subject to the procedural safeguards of judicial oversight and they do not afford due process to a person dealt with under s.28.1 and s.50(1). This amounts to a suspension of *Habeas Corpus*.

56. The CCLA will argue that the amendments are inconsistent with s.8 and 9 of the *Charter* and cannot be demonstrably justified in a free and democratic society pursuant to s.1 of the *Charter*.

5(c) Application with respect to s.6

57. It is the second Applicant's position that the Travel Ban Order prohibiting travel to and from Newfoundland and Labrador are *ultra vires* the jurisdiction of the provincial government.
58. The effect of s.28(h) is that an unelected official in Newfoundland and Labrador can, by measure that is not subject to any sort of scrutiny, suspend the mobility rights of all Canadian citizens and permanent residents. Even within a global pandemic, this power is inconsistent with the division of powers dictated by s.91 and s.92 of the *Constitution Act, 1867*.
59. Alternatively, the Second Applicant will argue that the Travel Ban Order violates the rights of all Canadians to move freely within Canada, contrary to s. 6 of the *Charter*. The implications go far beyond matters of a local or private nature within the province and instead extend to all Canadian citizens and permanent residents, even during a declaration of a public health emergency. Therefore, even if it is determined that the Chief Medical Officer of Health acted within the provincial government's constitutional jurisdiction, the second Applicant will argue that the Special Measure Orders themselves are contrary to s.6 and cannot be saved by s.1. There is no evidence that they are necessary and proportionate to the purpose pursuant to which they were ostensibly made.

5(d) The Application with respect to s.7

60. The Second Applicant will argue that the increased enforcement powers granted pursuant to s.28(1) and s.50(1) violate s.7. The lack of procedural safeguards through judicial oversight and due process has the potential to deprive an individual of the right to life,

liberty and security of the person in a manner not in accordance with the principles of fundamental justice.

61. Likewise, as regards the Travel Ban Order and amendments, the arbitrary nature of the exemption application and reconsideration process similarly violate s.7.

Conclusion

62. The first Applicant is challenging the constitutionality of the Travel Ban Order pursuant to s.6 of the *Charter*, and in light of its direct personal impact on her. The Second Applicant has a broader public interest in that challenge and can provide expertise, knowledge and experience that would not otherwise get before the Court.
63. As regards the s.8 and s.9 challenge to Bill 38's amendments to *PHPPA*, the second Applicant seeks relief from this Honourable Court because there are no reasonable alternative means available to bring the issue before the Court.
64. To date, the Second Applicant is not aware of anyone having been searched, detained or removed from Newfoundland and Labrador pursuant to s.28.1 or s.50(1). It is the position of the CCLA that this Court should not wait until a person is subject to these unlawful enforcement measures before ruling on their constitutionality, particularly in light of the current restrictions on matters being heard by the province's courts.
65. This Court has the opportunity now, to address the constitutionality of the Travel Ban Order and the increased powers of search, detention and removal included in s.28(1) and s.50(1) of conferred by the SMOs.

Declarations Sought by the CCLA

66. The CCLA seeks a declaration that the amendments introduced by Bill 38 to s.28(1) and s.50(1) of the *PHPPA* violate s.7, s. 8 and s.9 of the Charter and cannot be saved by s.1.

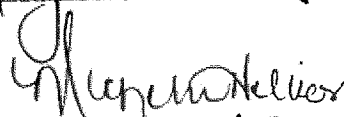
- 67. The CCLA seeks a further declaration that the Travel Ban Order imposed by Special Measures Order of the Chief Medical Officer of Health are *ultra vires* the jurisdiction of the province and are therefore of no force and effect.
- 68. In the alternative, the CCLA seeks a declaration that the Travel Ban Order violates s.6 and s.7 of the *Charter* and cannot be saved by s.1.
- 69. The CCLA seeks an Order pursuant to s. 24(1) of the *Charter* requiring that the Travel Ban Order be rescinded or deemed of no force and effect.

DATED at St. John's, Newfoundland and Labrador, this 20th day of May, 2020.



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ISSUED AT St. John's in the
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this 20 day of May, A.D., 2020.


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