

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

For immediate release

Thursday, September 17, 2020

CCLA CHALLENGE TO TRAVEL BAN ACHIEVES MIXED SUCCESS AT NEWFLD COURT

Toronto, September 17, 2020 – The Newfoundland & Labrador Supreme Court ruled today on “several novel and important constitutional questions” raised by the Canadian Civil Liberties Association (CCLA) and Kim Taylor of that province’s order that bans non-essential travel into the province.

Justice Donald H. Burrage found that the Newfoundland & Labrador law violated the Canadian Charter of Rights and Freedoms guarantee to “mobility” rights under section 6 of the Charter, but that the law was a reasonable limit upon Canadians right to move freely about Canada “in response to the COVID-19 pandemic.”

“Not a great day, but it’s a good day for those who take our rights seriously in Canada,” said Michael Bryant, Executive Director of CCLA. “We brought a serious challenge that was treated seriously by the courts. 130 pages seriously. The Court ruled that CCLA’s application ‘brought to the fore several novel and important constitutional questions.’ CCLA was granted public interest standing to challenge the law – a first for mobility rights in Canada. While we didn’t win every point today, we will analyze the judgement before making a decision about whether to appeal it.”

Justice Burrage ruled that “the right to ‘remain in’ Canada, as embodied in section 6(1) of the Charter, includes the right of Canadian citizens to travel in Canada for lawful purposes across provincial and territorial boundaries.” He went on to rule, however, that “The infringement of [this] Charter right to mobility was justified under s.1 of the Charter in response to the COVID-19 pandemic.”

CCLA’s Director of Fundamental Freedoms, Cara Zwibel said: “We succeeded on the major hurdle of establishing that a province must *justify* restricting Canadians’ right to move freely about Canada. The Court held that Canadians’ mobility rights were indeed violated by the Newfoundland travel ban - rejecting the Government’s argument that there was no such right - but found that the law represented a ‘reasonable limit’ under section one of the *Charter*.”

Background

Newfoundland and Labrador’s ban on non-essential travel into the province came into effect in early May – prior to that time those entering from outside the province were required to self-isolate for 14 days. Although the case numbers in the province indicated that the curve had been effectively flattened, the province instituted a ban on travel and the legislature amended the law to grant police extraordinary enforcement powers. **CCLA stepped forward to challenge these newly restrictive measures on the basis that Canadians have mobility rights under the *Charter* and that any restrictions on these rights have to be justified with evidence.** We argued that the government could not establish that the self-isolation requirement was insufficient to meet its public health objectives and a ban on travel could therefore not be justified.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Kim Taylor was born and raised in Newfoundland and now resides in Halifax. When her mother passed away suddenly, she sought an exemption to travel to Newfoundland and self-isolate. Her initial application to enter the province was denied and although her request was eventually reconsidered and granted, she had already missed the opportunity to be with her family in its most significant time of need. Although the case could not benefit her directly, Ms. Taylor joined CCLA in challenging the ban to try to ensure that others wouldn't have to endure what she did.

The province took the position that there is no right to move freely within Canada and that provinces can limit entry by Canadians provided they don't prevent them from moving permanently to the province or working in the province. This is an extremely narrow understanding of the *Charter's* mobility rights, and one that CCLA strongly opposed.

CCLA was represented by Rosellen Sullivan of Sullivan Breen Defence and Kim Taylor was represented by John Drover of Roebottom McKay Marshall. We are grateful to both counsel in this case for their excellent pro bono representation

- 30 -

CONTACTS:

Cara Zwibel, Fundamental Freedoms Program Director, CCLA
Czwibel@ccla.org / 416-319-2328

Rosellen Sullivan, Counsel to CCLA
Rsullivan@sbsdefence.ca / 709-739-4141

John Drover, Counsel to Kim Taylor
Jdrover@makethecall.ca / 709-570-8103

About the Canadian Civil Liberties Association

For over 50 years, CCLA has been Canada's national civil liberties organization. Founded in 1964, CCLA is an independent, national, nongovernmental organization, working in the courts, before legislative committees, in the classrooms, and in the streets, protecting the rights and freedoms cherished by Canadians and entrenched in our Constitution. CCLA fights for the civil liberties, human rights, and democratic freedoms of all people across Canada. Working with dedicated pro-bono lawyers from across the country, CCLA has intervened in courts at all levels, been vocal in the press and broadcast media, and advocated strategically and effectively to protect the rights and freedoms of all persons in Canada. CCLA has been at the forefront of all of the cutting-edge civil liberties debates. CCLA has been a leader in protecting rights and has earned widespread respect for its principled stand on such issues as national security, censorship, capital punishment, and police and state accountability.