



May 17, 2021

Honourable Randy Delorey
Attorney General & Minister of Justice
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Honourable Iain Rankin
Premier of Nova Scotia
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Delivered by Email

RE: Protest injunction

Dear Premier Rankin and Minister Delorey,

I am writing on behalf of the Canadian Civil Liberties Association (CCLA) regarding the injunction obtained by the government of Nova Scotia on Friday, May 14, 2021. We understand the injunction was granted by the Court on an *ex parte* basis. No *amicus curiae* or any party was heard from by the Court with respect to the significant restrictions on freedom of expression, freedom of association, and freedom of peaceful assembly that could be occasioned under the order's exceptionally broad terms. While it may be that the Attorney General, as an officer of the court, and in his quasi-judicial status, satisfied the Court that those issues were adequately addressed, that is not apparent from the Order.

The May 14th order is patently overbroad; a two-handed axe where a scalpel would have sufficed. We write to advise you that if Nova Scotia is unwilling to amend this order, we will be seeking to set aside or vary the Court's order to ensure that fundamental *Charter* rights are not unduly and indefinitely restricted.

We are well aware of the current state of the virus in Nova Scotia, but also that the Attorney General is required by statute, common law and our constitution to align Nova Scotia's laws with the *Charter of Rights*. On that front, the terms of the injunction appear to preclude *any and all* group protest activity regardless of whether the form of protest poses any significant risk of transmission, so long as the province's state of emergency is in effect. As you know, the province has been in a state of emergency for well over a year's time. There is currently no projection about when the state of emergency will be lifted. To *indefinitely* prohibit *all* protest activity for *all* Nova Scotians is not a carefully tailored minimal restriction on protected rights – it is a severe violation of the freedoms that are fundamental to a functioning democracy.

Other provincial governments and courts have grappled with the difficult question of facilitating the right to protest while respecting public health concerns during the pandemic. In British Columbia, a challenge to prohibitions on protest activity and religious gatherings was heard by its Supreme Court. Prior to the hearing the Chief Medical Officer of Health amended the existing health orders to include the following language in the preamble:

When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the *Charter* rights and freedoms of British Columbians less intrusively, where this is consistent with public health principles. In



consequence, I am not prohibiting outdoor assemblies for the purpose of communicating a position on a matter of public interest or controversy, subject to my expectation that persons organizing or attending such an assembly will take the steps and put in place the measures recommended in the guidelines posted on my website in order to limit the risk of transmission of COVID-19.

At the hearing before the court, the B.C. government conceded that the orders prohibiting outdoor protests were of no force during the relevant time and the province's Supreme Court granted a declaration that those orders violated sections 2(c) and (d) of the *Charter* and were of no force or effect. Most recently in Alberta, a broad injunction against protest activity was varied on consent of Alberta Health Services so that it only applied to the individuals and groups initially targeted by the injunction and could not be used to make any Albertan subject to arrest for contempt of court on the basis of an exceptionally broad injunction obtained on an *ex parte* basis.

Every government today is seeking to manage an emergency within their constitution. The Crown cannot limit fundamental *Charter* rights unless the restrictions are both necessary and proportional. Science and empirical evidence, rather than politics and fear, ought to guide government efforts to curb constitutional rights in the courts. When protests took place in Nova Scotia just over a year ago, Dr. Strang recognized those protests as "absolutely necessary and important." We now know more about the low risks of infection via socially distanced outdoor activity. Why, then, did the province take this overbroad approach?

We understand that the injunction obtained on May 14 was sought to deal with planned anti-mask and anti-lockdown protests. However, they also capture any other type of protest and this past weekend resulted in the ticketing of individuals participating in a driving protest in support of Palestinian rights. Going forward, the injunction could be used to justify arresting any number of protesters marching in support of any number of causes, regardless of whether the protesters respect distancing rules or pose any threat to public health. To make matters worse, people discussing as much on social media appear to run afoul of this overbroad order.

We urge you to have the injunction set aside but would also welcome the opportunity to have a dialogue about how to tailor the injunction in a manner that does not unduly restrict fundamental freedoms. While we would like to work cooperatively, we will be retaining legal counsel to vary the terms of the injunction if an agreement cannot be reached.

Sincerely,

A handwritten signature in black ink, appearing to read "Cara Faith Zwibel".

Cara Faith Zwibel
Director, Fundamental Freedoms Program