

2021

Hfx. No. 506040

Supreme Court of Nova Scotia

Between:

**The Attorney General of Nova Scotia representing
Her Majesty the Queen in Right of the Province of Nova Scotia,
the Department of Health and Wellness,
and the Chief Medical Officer of Health**

Applicant
Responding party on motion

and

**Freedom Nova Scotia, John Doe(s), Jane Doe(s),
Amy Brown, Tasha Everett, and Dena Churchill**

Respondents
Responding party on motion

and

The Canadian Civil Liberties Association

Non-Party
Moving party on motion

Notice of Motion

To: The Attorney General of Nova Scotia
Per: Duane A. Eddy
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**And to: Amy Brown
Tasha Everett
Dena Churchill**

Motion

The Canadian Civil Liberties Association (“CCLA”), the non-party, moves for an order:

1. Dispensing with the requirement of notice of this motion to the Respondents, “Freedom Nova Scotia”, “Jane Doe(s)” and “John Doe(s)”.

2. Permitting service of this motion on the Respondents Amy Brown, Tasha Everett, and Dena Churchill via email and by posting the notice of motion on the website www.ccla.org.
3. Granting the CCLA public interest standing in this proceeding as a party for the purpose of requesting a rehearing of the Application in Chambers, seeking to set aside or vary the Injunction Order obtained *ex parte* by the Applicant.

Time and place

The motion is to be heard by a judge in Chambers on June 4, 2021, at 10:00 am, in the Law Courts, 1815 Upper Water St, Halifax NS, B3J 1S7. The moving party requests one half hour for the hearing in chambers. The moving party says that the motion will not require more time.

References

The moving party relies on the following legislation, Rules, or points of law:

1. On May 14, 2021, the Court granted an order enjoining the Respondents, including all Jane Does and John Does everywhere in Nova Scotia, from various activities prohibited by Public Health Order, for an indefinite period of time;
2. The Injunction Order was obtained on an *ex parte* basis without any party appearing to defend the *Charter*-protected rights of Nova Scotians affected by the Injunction Order.
3. The Injunction Order provides that “anyone with notice of this Order may apply to the Court at any time to vary or discharge this Order or, so much of it as affects such person, in accordance with the Rules of Civil Procedure” (paragraph 9);
4. Civil Procedure Rule 31.10 permits a judge to order a substituted method of notification if required. The Injunction Order permits service of the Injunction Order via email and social media posting, and by posting on the website www.novascotia.ca/coronavirus. It is not possible for the CCLA to serve the named respondents “Freedom Nova Scotia” or “Jane Doe(s)” or “John Doe(s)”, as none of these respondents are legal persons.
5. Civil Procedure Rule 35.01(e) allows a person to make a motion to be added as a party, and Rule 35.08(2) creates a rebuttable presumption that the effective administration of justice requires each person who has an interest in the issues to be before the court in one hearing.
6. The CCLA intends to seek a rehearing of the Application in Chambers, and raise the following issues:
 - a. The untested evidence presented to the Court does not support either the *quia timet* relief or the scope of the relief obtained in the Injunction Order.
 - b. The Injunction Order incorporates by reference a definition of prohibited activity (“Illegal Public Gathering”) contained in an Order under s. 32 of the Health

Protection Act, which is subject to change by the Chief Medical Officer at his discretion, at any time, and is in fact frequently changed.

- c. The Injunction Order applies until varied by the Court, without limitation.
 - d. The Injunction Order violates the fundamental rights of all Nova Scotians, specifically the rights to freedom of expression, freedom of assembly, and liberty protected by sections 2(b), 2(c), and 7 of the Canadian Charter of Rights and Freedoms, ss 2(a), 2(b), 7, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;
 - e. The Injunction Order is arbitrary because the definition of “Illegal Public Gathering” permits some outdoor activities and prohibits other outdoor activities without consideration of the risk of each activity;
 - f. The Injunction Order is overbroad in its scope because it applies regardless of whether persons are making best-efforts to comply with public health orders;
 - g. The Injunction Order is also grossly disproportionate insofar as it applies to online activities that have no public health risk and outdoor activities where the public health risk is low;
 - h. The Injunction Order’s interference with the constitutionally-protected rights of Nova Scotians cannot be demonstrably justified in a free and democratic society.
7. The CCLA meets the tripartite test for public interest standing, in respect of the motion for rehearing of the Injunction Order:
- a. the motion raises a serious justiciable issue; and
 - b. the CCLA has a real stake in the proceeding and is engaged with the issues that it raises; and
 - c. The motion is a reasonable and effective means of bringing the issue before the Court.
8. Civil Procedure Rules 22.06 allow a party to require rehearing of an *ex parte* order affecting the rights of that party; and
9. This Court also has inherent jurisdiction to review an order obtained *ex parte* to determine whether it ought to be varied or set aside.

Evidence

The evidence in support of the motion is as follows:

1. The affidavit of Cara Zwibel, affirmed May 27, 2021.

Possible order against you

You may file an affidavit and a brief, attend the hearing of the motion, and state your position on whether the proposed order should be made. If you do not attend, the judge may grant an order without further notice to you.

Signature

Signed May 27, 2021

Nasha Nijhawan

Benjamin Perryman

Counsel for the CCLA