

Form 5.07

2022



No. 5 1 3 4 7 9

Supreme Court of Nova Scotia

Between:

NOVA SCOTIA CIVIL LIBERTIES ASSOCIATION

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA
as represented by the Minister of Municipal Affairs and Housing

Respondent

Notice of Application in Court

To: HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA, as represented by the Minister of Municipal Affairs and Housing

c/o Nova Scotia Department of Justice
1690 Hollis Street, Halifax, NS B3J 2L6
902-424-4223

And to:

The Attorney General of Nova Scotia
1690 Hollis Street, Halifax, NS B3J 2L6
902-424-4223

The Applicant requests an order against the Respondent, her Majesty the Queen in Right of Nova Scotia, as represented by the Minister of Municipal Affairs and Housing.

The Applicant is applying to the Court for:

1. An order that the Direction of the Minister under a Declared State of Emergency 22-002 issued January 28, 2022, and the Direction of the Minister under a Declared State of Emergency 22-003 issued February 4, 2022 (the “**Directives**”) are inconsistent with subsections 2(b) and 2(c) of the *Canadian Charter of Rights and Freedoms* and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to section 1 of the *Charter*, as well as, if applicable, an immediately effective declaration that the Directives are of no force and effect pursuant to subsection 52(1) of the *Constitution Act, 1982*;
2. A hearing of this matter on an expedited basis;
3. Such costs in this Application as the Court deems just and equitable in light of the public interest nature of the proceeding; and
4. Such further and other relief as this Honourable Court deems just.

The Applicant started this Application by filing this notice on the date certified by the prothonotary.

Grounds for the order

The Applicant is applying for the order on the following grounds:

The Province of Nova Scotia’s Emergency Directives

1. On March 22, 2020, the Province of Nova Scotia declared a Provincial State of Emergency under subsection 12(1) of the *Emergency Management Act*, SNS 1990, c. 8 in response to the public health situation created by the COVID-19 pandemic.
2. In the Declaration of Provincial State of Emergency signed by the Minister of Municipal Affairs and Housing, the nature of the emergency was articulated as follows:

The event of the COVID-19 virus in the Province which has already caused a pandemic and requires the prompt coordinated action or regulation for the protection of property and the health and safety of persons in Nova Scotia.
3. The Provincial State of Emergency was renewed every 14 days, without interruption, until March 2022 pursuant to subsection 19(2) of the *Emergency Management Act* and with approval of the Governor in Council.
4. Since March 2020, pursuant to the authority delegated to him with respect to communicable diseases under section 32 of the *Health Protection Act*, SNS 2004, c. 4, the Chief Medical Officer of Health issued successive Public Health Orders that significantly affected the lives of Nova Scotians.

5. Since March 2020, the Government of Canada has also introduced various public health measures in areas within its federal jurisdiction, including but not limited to new compulsory medical requirements for federal employees and contractors and conditions on international and domestic travel and transportation.
6. In and around January 2022, citizens of Nova Scotia who were concerned about perceived negative impacts of various Public Health Orders issued by the federal and provincial governments participated in and/or expressed support for certain demonstrations that were organized by members of the Canadian public to express their views about the relative costs and benefits of Public Health Orders and measures in effect at that time.
7. On or around January 23, 2022, certain Nova Scotia residents gathered at Amherst Centre Mall from which they drove slowly in their vehicles in single file on Highway 104, eventually parking their vehicles for several hours in the single common lane near the Nova Scotia - New Brunswick border. They departed peacefully. At no material time was traffic substantially impeded or public access to the roadway blocked. The demonstrators had no plan to repeat the demonstration in Nova Scotia at another time.
8. Organizers of the demonstration spoke with Amherst Police in advance and understood that the activities, as planned and executed, were condoned by Amherst Police.
9. On or around the morning of January 27, 2022, vehicles departed Nova Scotia for a demonstration scheduled to take place in Ottawa, Ontario. As a friendly "send-off" for the participants, supportive members of the public gathered peacefully early in the morning on road shoulders at several locations throughout Nova Scotia, where they waved to departing vehicles as they passed by. In doing so they did not notably impede the flow of traffic.
10. With respect to any of the above-noted activity in late January 2022, to the best knowledge of the Applicant, no person was charged with a criminal or regulatory offence in Nova Scotia nor was any person alleged to have committed any tort, nuisance, or any other legal wrong.
11. In response to the above-noted peaceful activities of Nova Scotia residents, the Province took broad steps to ban any involvement in, or support of, any related or similar demonstration, irrespective of its compliance with any public health measures in effect at that time under the *Emergency Management Act* and/or the *Health Protection Act*, including for example social distancing and masking, and irrespective of whether any illegal or substantially disruptive activity or serious threat to the public interest in Nova Scotia had ever in fact occurred.
12. On or about January 28, 2022, the Minister of Municipal Affairs and Housing issued the 'Direction of the Minister under a Declared State of Emergency 22-002'.
13. The January 28, 2022 Directive prohibits any person from "creating or contributing to" a "partial or complete blockade" of the normal flow of traffic on any street, road or highway anywhere in the Province, and from stopping or gathering "on or near"

Highway 104 or the Nova Scotia – New Brunswick border, in support of a “2022 Freedom Convoy”, an “Atlantic Canada Holds the Line” event, or any other organized protest that is “intended to interfere with the normal flow of vehicle traffic” on any road, street, or highway anywhere in Nova Scotia.

14. The January 28, 2022 Directive also prohibits any person from “participating in, financing, organizing, aiding, encouraging, or supporting” any interruption of the normal flow of traffic at specific locations in support of the above-noted activities.
15. Fines for a summary conviction under the January 28, 2022 Directive range from \$3,000 to \$10,000 for individuals and from \$20,000 to \$100,000 for a corporation.
16. On or about February 4, 2022, the Minister of Municipal Affairs and Housing issued the ‘Direction of the Minister under a Declared State of Emergency 22-003’.
17. The February 4, 2022 Directive prohibits all persons from stopping, parking or operating a vehicle or putting any item in such a manner as to contribute to a partial or complete blockade of the normal flow of traffic on any road, street or highway in the Province, including all municipal roads, streets and highways, for any reason.
18. The February 4, 2022 Directive was set to remain in place for the duration of the Provincial State of Emergency. The January 28, 2022 Directive also remained in effect. Individuals and corporations remained subject to significant fines for failing to comply with either directive for the duration of the Provincial State of Emergency, whose anticipated end date was unknown at that time.
19. After the issuance of the Directives, forms of participation in protest, demonstration, legal fundraising, and other activity related to criticism of provincial or federal government policies in Nova Scotia, in particular in relation to COVID-19, became significantly less active and in some cases became completely inactive.
20. The Applicant says the Directives can reasonably be thought to have had a chilling effect on other political expression and assembly activity in the Province.
21. On or about March 4, 2022, the Province announced that the Provincial State of Emergency would not be renewed after its expiration on March 20, 2022.
22. The Applicant says the Province’s response was an overbroad and excessive use of its emergency powers under the *Emergency Management Act* that constituted, in its purpose and effect, an indefinite ban on protected freedom of assembly and freedom of expression that was unjustifiable in a free and democratic society.
23. Many aspects of the January 28, 2022 Directive, and all of the February 4, 2022 Directive, applied everywhere in Nova Scotia. They were in effect for an indefinite period with no substantive criteria for their expiry. The Directives were not limited to methods or locations where the protections of sections 2(b) and 2(c) of the *Charter* do not apply. The purpose and effect of the Directives was broadly to limit protected freedom of expression and freedom of assembly in the entire Province for a period of at least seven weeks.

24. The Directives limit otherwise lawful forms of political expression and assembly that are protected by the *Charter* in ways unrelated to any public health threat that gave rise to the Provincial State of Emergency under which they were made.
25. The Applicant says the Province engaged in no consultation nor did it meaningfully consider other options before adopting the current text of the Directives, which were made within days of the precipitating events with no debate in the Legislature or any other public forum and were issued as emergency edicts by the Minister of Municipal Affairs and Housing under the extraordinary authority delegated to him as a result of public health concerns.
26. The Directives unjustifiably infringe both sections 2(b) and 2(c) of the *Charter*, even in the context of the COVID-19 pandemic and Provincial State of Emergency.
27. The Applicant says that, in the event that the Directives cease to be in force and effect prior to the hearing of this Application, serious grounds for the Application nonetheless exist. Given the unpredictable nature of the COVID-19 pandemic and associated government measures and restrictions, *inter alia*, in the circumstances it is in the interests of justice to subject to judicial scrutiny the Province's extraordinary use of its emergency powers under the *Emergency Management Act* to limit protected freedom of expression and freedom of assembly throughout the Province by way of the Directives, irrespective of their date of revocation.

The Nova Scotia Civil Liberties Association

28. The Nova Scotia Civil Liberties Association ("**NSCLA**") meets the tripartite test for public interest standing in respect of this Application:
 - a. the Application raises a serious justiciable issue;
 - b. the NSCLA has a real stake in the proceeding and is engaged with the issues that it raises; and
 - c. the Application is a reasonable and effective means of bringing the issue before the Court.
29. Incorporated under the laws of Nova Scotia in 2021, the NSCLA is a provincial, non-profit, independent, non-governmental organization dedicated to promoting respect for and observance of fundamental human rights and civil liberties in Nova Scotia. Pursuant to its bylaws, the NSCLA works to defend and ensure the protection and full exercise of those rights and liberties through research, public advocacy, and litigation.
30. The NSCLA regularly engages with the public by way of government advocacy and online and print media, including social media and its website through which it receives donations from the public to execute its mission. It coordinates and communicates regularly with representatives of other national and provincial civil liberties organizations throughout Canada.

31. The Board of Directors of the NSCLA includes representatives from various medical, legal and educational professions as well as members of the business community and other representatives of civil society in Nova Scotia.
32. Having been constituted in 2021, this Application is the first litigation in which the NSCLA has appeared as a party in Nova Scotia courts. Similar organizations with respect to purpose and goals, however, including for example the Canadian Civil Liberties Association, have been granted public interest standing in numerous cases concerning the constitutionality of public health and emergency restrictions in the context of the COVID-19 pandemic, including in this Honourable Court.
33. The NSCLA has a genuine and specific interest in, and has endeavored to obtain expertise in, addressing legal issues relating to the rights of freedom of expression and freedom of assembly.
34. The NSCLA has the resources to pursue this Application thoroughly, effectively, and expeditiously. The NSCLA is being represented by able and experienced counsel with the capacity to manage litigation of this nature. It will present a complete record that will assist this Court in its consideration of the legal questions regarding the Directives that lie at the heart of this case.
35. The NSCLA has concerns with the Directives, including whether the *Charter*-protected rights to freedom of expression and freedom of assembly of Nova Scotians are engaged and unjustifiably infringed. On the basis of these concerns, the NSCLA wishes to pursue a hearing of this Application pursuant to Civil Procedure Rule 5.07.
36. The immediate effect and serious consequences of the Directives on the rights and freedoms of people across Nova Scotia requires a consideration of their legality. It is reasonable and effective for the NSCLA, with its demonstrated interest and counsel with established expertise regarding the issues raised in this Application, to bring it forward in this timely manner.

Witnesses for the Applicant

The Applicant expects to file affidavits from the following witnesses, dealing with the following subjects:

<i>Name of witness</i>	<i>Subject</i>
Thomas Everett	Facts relating to public demonstration events that occurred on or around Nova Scotia highways and other locations in January 2022
William McMullin	The nature and purpose of the Nova Scotia Civil Liberties Association (public interest standing)

Motion for directions and date

At 11:00 a.m. on Tuesday, May 3, 2022, the Applicant will appear before a judge at the Nova Scotia Supreme Court, 1815 Upper Water Street in Halifax, Nova Scotia to make a motion for an order giving directions and appointing a time, date, and place for the hearing. The judge may provide directions in your absence, if you or your counsel fail to attend.

Affidavit on motion for directions

The Applicant files the affidavit of Daniel F. Wilband, sworn on March 16, 2022, as evidence on the motion for directions. A copy of the affidavit is delivered to you with this notice.

You may participate

You may file with the court a notice of contest, and any affidavit for the motion for directions, no more than twenty-five (25) days after this notice is delivered to you or you are otherwise notified of the application. Filing the notice of contest entitles you to notice of further steps in the Application.

Possible final order against you

The court may grant a final order on the application without further notice to you if you fail to file a notice of contest, or if you or your counsel fail to appear at the time, date, and place for the motion for directions.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902-424-7968).

When you file a document you must immediately deliver a copy of it to the Applicant and each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

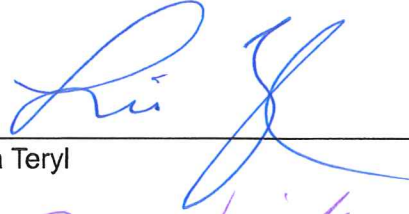
The Applicant designates the following addresses:

Nova Scotia Civil Liberties Association
% Teryl Scott Lawyers, Inc.
380 Bedford Hwy Suite 101
Halifax, NS B3M 2L4

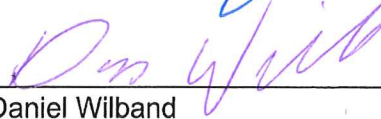
Documents delivered to this address are considered received by the Applicant on delivery. Further contact information is available from the prothonotary.

Signature

Signed March 16, 2022



Lisa Teryl



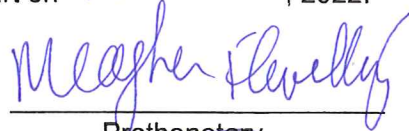
Daniel Wilband

Teryl Scott Lawyers, Inc.
380 Bedford Hwy Suite 101
Halifax, NS B3M 2L4
Tel: 902-706-5030
Fax: 902-800-0081

**Counsel for the Nova Scotia Civil
Liberties Association**

Prothonotary's certificate

I certify that this notice of application was filed with the court on March 17, 2022.



Prothonotary

MEAGHEN FLEWELLING
Deputy Prothonotary