



2021

C.A. No. 507668

Nova Scotia Court of Appeal

Between:

The Canadian Civil Liberties Association

Appellant

and

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

Respondents

and

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

Respondents

AFFIDAVIT OF CARA ZWIBEL

I, Cara Zwibel, of Toronto, Ontario, hereby affirm and give evidence as follows:

1. I am the Director of the Fundamental Freedoms Program at the Canadian Civil Liberties Association ("CCLA"), the Appellant in the intended appeal and the moving party on this motion. I make this Affidavit in support of the CCLA's motion for an extension of time to file a Notice of Appeal before the Nova Scotia Court of Appeal.
2. I understand that the purpose of this affidavit is to provide the Court with an accurate, complete and truthful explanation for the CCLA's failure to meet the time deadline under the Rules, and also to describe the CCLA's reasons for seeking the Court's permission to proceed with the appeal.
3. I also understand that I may be cross-examined on the contents of my motion and affidavit if the Court so directs.

4. I have personal knowledge of the evidence affirmed in this affidavit except where otherwise stated to be based on information and belief.
5. If the source of any information provided in this affidavit is not based on my own personal knowledge, I will accurately describe the source of that information and I will state my belief of the source.
6. On May 12, 2021, the Respondents, the Attorney General of Nova Scotia, the Department of Health and Wellness, and the Chief Medical Officer of Health (hereafter the “Province”) filed a Notice of Application in Chambers (*ex parte*) with the Nova Scotia Supreme Court seeking a *quia timet* injunction. Attached to my affidavit as Exhibit “A” is a true copy of the Province’s notice.
7. The evidence in support of the application was an affidavit affirmed by the Respondent Chief Medical Officer of Health, and an affidavit affirmed by the Director of Public Safety and Investigations with the Department of Justice for the Province. Attached to my affidavit as Exhibit “B” are true copies of these affidavits.
8. The Attorney General also filed a brief in support of the application, a true copy of which is attached to my affidavit as Exhibit “C”.
9. On May 14, 2021, the application was heard *ex parte* by the Honourable Justice Scott Norton. Later that day, the Court granted an order (“Injunction Order”) enjoining the Respondents, including all Jane Does and John Does everywhere in Nova Scotia, from various activities prohibited by Order of the Chief Medical Officer of Health, pursuant to s. 32 of the *Health Protection Act*, SNS 2004, c 4 (“Public Health Order”), for an indefinite period of time. The decision of Norton J. granting the Injunction Order is set out in *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170.
10. The Injunction Order provides at paragraph 9 that, “The Respondents and 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 process provided in the *Civil Procedure Rules...*”. Attached to my affidavit as Exhibit “D” is a true copy of the Injunction Order granted by Norton J. on May 14, 2021.
11. On May 17, 2021, the CCLA informed the Attorney General by letter that the Injunction Order violated the *Charter*-protected rights of Nova Scotians, and requested that the Province consent to variation or rescission of the Injunction Order. The Attorney General did not respond to the CCLA’s request. Attached to my affidavit as Exhibit “E” is a true copy of the May 17, 2021 letter sent by the CCLA to the Attorney General.
12. On May 27, 2021, the CCLA sent a letter to the Court, attaching documents to file for a rehearing of the application for an Injunction Order. The CCLA understood that the Nova Scotia *Civil Procedure Rules* provide the right to a hearing *de novo* of an *ex parte* injunction application. The Court directed that the CCLA first obtain public interest standing before

requesting a rehearing. Attached to my affidavit as Exhibit “F” is a true copy of the CCLA’s May 27, 2021 letter to the Court.

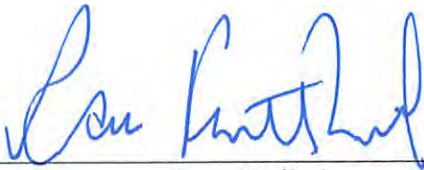
13. On June 4, 2021, the CCLA was granted public interest standing by order of Gabriel J. The Attorney General opposed the CCLA’s request for an expedited rehearing date of June 14, 2021, and Gabriel J. set the rehearing down for the Attorney General’s preferred date of June 30, 2021. A timetable for the exchange of rehearing materials was also ordered. Attached to my affidavit as Exhibit “G” is a true copy of Gabriel J.’s June 4, 2021 Order.
14. On June 14, 2021, the Attorney General filed a motion to have the Injunction Order discharged on the basis that it was “no longer necessary”. The evidence in support of the motion was a solicitor’s affidavit. No brief was filed. Attached to my affidavit as Exhibit “H” is a true copy of the Notice of Motion and Solicitor’s Affidavit.
15. The Province subsequently filed supplemental affidavits from the Chief Medical Officer of Health and the Director of Public Safety, pursuant to the scheduling order of Gabriel J. Attached to my affidavit as Exhibit “I” is a true copy of these affidavits.
16. The CCLA opposed the Province’s discharge motion given the lack of notice to other Respondents, solicitor’s affidavit containing hearsay statements, and failure to file a brief, but did not contest that discharge of the order was appropriate. Gatchalian J. granted discharge of the Injunction Order in Chambers on June 22, 2021. Attached to my affidavit as Exhibit “J” is a true copy of Gatchalian J.’s June 22, 2021 Order.
17. Later that day, the Attorney General wrote to Chipman J. by letter, submitting that the matter was moot and requesting that the rehearing date and filing deadlines be vacated. Attached to my affidavit as Exhibit “K” is a true copy of the Attorney General’s June 22, 2021 letter.
18. On June 25, 2021, the Attorney General filed his brief for rehearing conceding that the Injunction Order engaged the *Charter*. Attached to my affidavit as Exhibit “L” is a true copy of the Attorney General’s brief.
19. Chipman J. heard oral argument on the issue of mootness on June 30, 2021, after receiving written submissions from both parties. At the appearance before Chipman J., the parties were prepared to conduct cross-examinations and argue the merits of the Injunction Order in a hearing *de novo*.
20. In its written and oral submissions on the issue of mootness, the CCLA submitted that the Attorney General failed to provide full and fair disclosure of the facts and law on the *ex parte* Application, and that this weighed in favour of the Court exercising its discretion to hear the matter if determined moot. Attached to my affidavit as Exhibit “M” is a true copy of the CCLA’s filed brief on the issue of mootness.
21. The CCLA also raised in oral argument two newly discovered issues to support that the Court should exercise its discretion to hear the matter, including that there was no evidence before Norton J. that the Injunction Order should be issued against a person named Amy Brown, and

that the test cited by the Attorney General for *quia timet* injunctions appeared to have come from a Wikipedia article regarding same, which cited only a British case from 1884. Attached to my affidavit as Exhibit "N" is a true copy of the Wikipedia article provided to the Court during the hearing.

22. Chipman J. decided that the matter was moot and that he was not prepared to exercise his discretion to allow the rehearing to occur. He issued his written decision shortly after the conclusion of the oral hearing, in *Nova Scotia (Attorney General) v. Freedom Nova Scotia*, 2021 NSSC 217.
23. The CCLA now seeks to appeal the decision of Norton J. granting the Injunction Order, on the basis that it contains several reviewable errors. Attached to my affidavit as Exhibit "O" is the proposed Notice of Appeal the CCLA intends to file if the Court permits it to do so. It fully describes the errors the CCLA says occurred in the court below.
24. The appeal deadline in respect of Norton J.'s decision was June 22, 2021. On this date, the Attorney General's *ex parte* Application in Chambers remained scheduled for a rehearing on June 30, 2021, in accordance with the June 4, 2021, order of Gabriel J.
25. The CCLA's delay was caused primarily by its reliance on the availability of the right to a hearing *de novo*, the Court ordered timeline for rehearing, and the fact that the scheduled rehearing was not vacated until June 30, 2021. Since it became aware of the decision of Norton J. issuing the Injunction Order on May 14, 2021, the CCLA has at all times maintained a genuine, good faith intention to seek review of the decision.
26. Notice to the Attorney General of the CCLA's intention to appeal was provided to counsel for the Attorney General in this matter, Duane Eddy, on July 8, 2021. Attached to my affidavit as Exhibit "P" is a true copy of the July 8, 2021 letter to Mr. Eddy providing notice of intention to appeal.

Affirmed before me on July 12 2021)
at Toronto, Ontario)
)
)
)
)


Abigail C. Deshman
LSUC # 56757T


Cara Zwibel

This is Exhibit "A" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal line. The signature is stylized and appears to be the name 'Alger'.

Form 5.02

2021

Hfx. No.

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

and

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

Respondents

Ex Parte Application by The Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia, Applicant, for an order granting a *quia timet* injunction

***Ex Parte* Application**

Order applied for

The Applicant is applying for an Order granting a *quia timet* injunction which:

1. Orders compliance with the provisions of the *Health Protection Act* 2004, c. 4, s. 1;
2. Enjoins the Respondents, and any other person acting under their instructions or in concert with them, from organizing in-person public gatherings: and
3. Authorizes law enforcement to engage in enforcement measures to ensure compliance with the *Health Protection Act* and any Order issued under section 32 of the *Health Protection Act*, or in accordance with the *Health Protection Act*.

Ex parte

This Application is made without notice to any other person because injunctive relief is necessary to prevent or reduce the spread of SARS-CoV-2 which causes Covid-19 within the Province of Nova Scotia.

Grounds for order

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

1. Covid-19 is a new disease which can cause adverse health outcomes, including death in individuals with pre-existing medical conditions and in individuals over 65 years of age. People not in a high-risk group can also experience adverse health outcomes after contacting the SARS-CoV-2 virus which causes Covid-19.
2. In addition, there is a new strain of the SARS-CoV-2 virus for which there is no underlying immunity and therefore wide spread of the virus can create a significant burden of disease and negative impacts on health systems, communities and economies.
3. There are at present no drug therapies to cure Covid-19 nor its various strains. Accordingly, the only available resources to prevent or reduce the spread of the virus, aside from vaccination, involve the use of public health requirements, including physical distancing, limiting the size of gatherings and mandatory mask wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.
4. Nova Scotia public health requires people maintain a distance of two meters from one another. This physical distance requirement is based on current knowledge regarding the virus' spreading mechanisms.
5. If left unchecked, SARS-Cov-2 can spread exponentially, for this reason, it is critical that public health requirements are followed to minimize the spread of the virus, reduce long-term consequences, and reduce the number of hospitalizations and deaths. It is therefore imperative to reduce the number of contacts an individual has with others to reduce the risk of spread of the virus.
6. Due to the virus' transmissibility patterns, restrictions on how people interact with others outside of their households are necessary to prevent the transmission of SARS-CoV-2 and can effectively reduce cases of Covid-19. This includes mandating the use of mask wearing.
7. The Respondents, "Freedom Nova Scotia" have organized a public gathering via social media, advertisements, and other communication mediums, to take place at or near Citadel Hill in Halifax, Nova Scotia on May 15, 2021 commencing at 1 p.m.
8. Historical public gatherings organized by Freedom Nova Scotia and others within the Province have not complied with the requirements of COVID-19 Emergency Health Orders issued under section 32 of the *Health Protection Act*, including but not limited to:
 - a. masking requirements;
 - b. attendance limits applicable to indoor or outdoor gatherings; and
 - c. minimum physical distancing requirements.
9. The Applicant relies on the following legislation and points of law:
 - a. *Health Protection Act* 2004, c. 4, s. 1.

b. *Judicature Act* .

c. Nova Scotia Civil Procedure Rule 5.02.

d. Nova Scotia Civil Procedure Rule. 2.03

Evidence supporting Application

The Applicant offers the following Affidavits in support of the application:

- Dr. Robert Strang, Chief Medical Officer of Health.
- Hayley Crichton, Director of Public Safety and investigations.

Hearing

The Applicant will appear before the Judge in Chambers on Friday, May 14, 2021 at 9: 30 a.m. in the Law Courts at Supreme Court of Nova Scotia (HRM), The Law Courts, 1815 Upper Water Street, Halifax, NS B3J 1S7.

Contact information

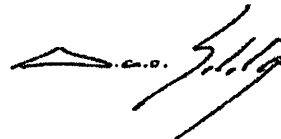
The applicant designates the following address:

1690 Hollis Street, 8th Floor
PO Box 7
Halifax, NS B3J 2L6
Telephone: 902-209-5986
Fax: 902-424-1730

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

Signature

Signed on May 12, 2021.



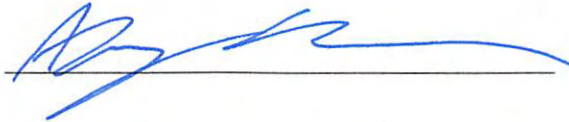
Duane A. Eddy, counsel for the Applicant

Prothonotary's Certificate

I certify that this Ex Parte Application was filed with the court on _____, 20__.

Prothonotary

This is Exhibit "B" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be a name, possibly "A. J. Zwibel".

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

and

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

Respondents

Affidavit of Dr. Robert Strang

I make oath/affirm and give evidence as follows:

1. I am Dr. Robert Strang, Chief Public Health Officer, Department of Health and Wellness for the Province of Nova Scotia. In this role, I provide public health expertise to support health surveillance, population health, and disease control initiatives on issues of public health importance under the authority of the *Health Protection Act 2004*, c. 4, s. 1.
2. I have personal knowledge of the evidence sworn to in this Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. I received my Public Health and Preventive Medicine specialty fellowship training in 1997. I have worked as an associate Medical Officer of Health in BC (1997-1999), regional Medical Officer of Health (1999-2006), provincial Deputy Chief Medical Officer of Health (2006-2007) and since 2007 Chief Medical Officer of Health for the Province of Nova Scotia.
5. As a part of my training and experience, I have expertise in assessing and interpreting evidence on public health matters, and my personal assessment of the facts in this affidavit based on my experience and expertise is that these facts represent the best currently available evidence related to SARS-CoV-2 and Covid-19.

6. Covid-19 is a new disease which can cause adverse health outcomes, including death in individuals with pre-existing medical conditions and in individuals over 65 years of age. People not in a high-risk group can also experience adverse health outcomes after contacting the SARS-CoV-2 virus which causes Covid-19.
7. In addition, SARS-CoV-2 is a new strain of coronavirus for which there is no underlying immunity and therefore wide spread of the virus can create a significant burden of disease and negative impacts on health systems, communities and economies.
8. There are at present no drug therapies to cure Covid-19 nor its various strains. Accordingly, the only available resources to prevent or reduce the spread of the virus, aside from vaccination, involve the use of public health requirements, including physical distancing measures, limiting the size of gatherings and mandatory mask wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.
9. Nova Scotia public health requires that people maintain a distance of two meters from one another. This physical distance requirement is based on current knowledge regarding the virus' spreading mechanisms.
10. If left unchecked, SARS-Cov-2 can spread exponentially, for this reason, it is critical that public health requirements are followed in order to minimize the spread of the virus, reduce long-term consequences, and reduce the number of hospitalizations and deaths. It is therefore imperative to reduce the number of contacts an individual has with others to reduce the risk of spread of the virus.
11. Due to the virus' transmissibility patterns, restrictions on how people interact with others outside of their households are necessary to prevent the transmission of SARS-CoV-2 and its variants, which in turn can effectively reduce cases of Covid-19. This includes mandating the use of mask wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.
12. The current Public Health Order attached to this my sworn affidavit as **Exhibit "A"** outline measures directed toward preventing or reducing the transmission of Covid-19 among the population of Nova Scotia.

Transmission of SARS-Co V-2 can Occur Even When Infected People are Asymptomatic

13. SARS-CoV-2 is spread primarily from close person to person contact. The virus may be transmitted by respiratory droplets or droplet nuclei (aerosols) produced when an infected person breathes, coughs, sneezes, talks, or sings. The virus may also be transmitted by touching a surface or object contaminated with the virus and then touching the eyes, nose, or mouth
14. Risk of SARS-Co V-2 transmission depends on many variables, such as location (indoors versus outdoors), quality of ventilation, and activity. The Public Health Order requires that people maintain a distance of two meters (six feet) from one another. This physical distance requirement is based on current knowledge of droplet spread which is the main way the virus spreads between people.
15. These requirements are designed to be implemented together as no one measure alone will prevent all SARS-CoV-2 person-to-person transmission.

16. The time from infection with SARS-CoV-2 until the development of observable symptoms is called the incubation period. The incubation period can last 14 days or very rarely longer. Unfortunately, infected people can transmit SARS-CoV-2 to others beginning about 48 hours before symptoms are present (pre-symptomatic transmission) until at least 10 days after, longer if symptoms continue past 10 days.
17. Not all people infected with SARS-CoV-2 develop symptoms but, even without symptoms, an infected person can transmit the virus to others. This is called asymptomatic transmission.
18. SARS-CoV-2 can be spread through direct or indirect (surfaces) contact with an infected person. Community spread refers to the spreading of a disease from person to person in the community. Community spread can occur when the source is known or unknown. The latter form of spread poses a serious threat to the community. The effectiveness of contact tracing is greatly reduced in cases of unknown community spread.
19. COVID-19 testing is available in Nova Scotia for both asymptomatic and symptomatic people, people in outbreak settings, and people identified as a close contact of a case. A COVID-19 test result only reflects a snapshot of a moment in time. A negative result does not necessarily mean that the person is not infected. A person infected with SARS-CoV-2 could have 13 days of negative results and a positive test on day 14.

Nova Scotia's Current COVID-19 Situation

The Spread of COVID-19

20. Since March 1, 2020, there have been a total of 4152 confirmed cases of COVID-19 and 71 deaths reported.
21. During Wave 3 (April 1, 2021 – present), there have been 2410 confirmed cases and 5 deaths have been reported. The cases reported in Wave 3 constitute 58% of the total cases reported in Nova Scotia since March 1, 2020. In addition, there have been 103 hospitalizations (non-ICU and ICU) compared to 12 during Wave 2, 54% of hospitalizations occurred in individuals <60 years of age and 13.7% of contacts became cases, compared to 7.6% in Wave 2 suggesting that the virus is more transmissible.
22. A true copy of the SARS-CoV-2 statistics are attached hereto as Exhibit "B".
23. As evidenced from the above and set out in Exhibit "B", SARS-CoV-2 can spread exponentially if left unchecked. It is critical that Nova Scotians follow public health requirements and protocols to minimize the spread of the virus and its variants, reduce the long-term consequences, and reduce the number of hospitalizations and deaths.
24. Left unchecked SARS-CoV-2 virus will spread within a population resulting in an exponential growth in the number of people infected. Public health measures put in place in December 2020 brought cases down. When public health measures were eased in March 2021, cases plateaued but began to rise again in April and have continued into May. Even with increased public health requirements in place, the number of recognized SARS-CoV-2 infections (COVID-19 cases) has continued to grow dramatically in since April 1, 2021, as set out in Exhibit "B".

Nova Scotia's COVID Health Care Capacity related to COVID-19

25. When this capacity is exceeded, non-COVID-19 patients will experience cancelled treatments for non-urgent conditions. The cancellation of these non-urgent, but necessary, surgeries can have health impacts, such as ongoing pain and mobility issues.
26. If Nova Scotia's COVID-19 hospitalization capacity is significantly exceeded, it could result in the need to ration acute care resources. This may mean that some patients, who are in need of critical care supports, may be unable to receive those supports.
27. In Nova Scotia, as of May 11, 2021, there were 1591 active cases of people with COVID-19, 64 people in the hospital due to COVID-19. There were 10 patients in the ICU, 54 patients in non-ICU beds due to COVID-19 and 71 people have died from COVID-19 or associated complications since the first Public Health Order was issued on March 23, 2020. This high level of hospitalization will result in continued cancellation of non-urgent surgical treatments. If the requirements for in hospital care continue to escalate, a need to triage access to care supports, especially supports in intensive care, may be required. This could require doctors and nurses to make decisions between which patients live and which die.

Nova Scotia's COVID-19 Public Health Measures

28. Nova Scotia has attempted to control the spread of the SARS-CoV-2 virus by implementing a number of public health requirements under the Public Health Order. Restrictions on how people interact with others outside of their households in public places, whether indoors or outdoors, are necessary to prevent the transmission of SARS-CoV-2 and are effective in reducing cases of COVID-19.
29. Nova Scotia's approach has been to attempt to protect Nova Scotians and control the spread of the virus through the enactment of Public Health restrictions on gathering limits, physical distancing and mandatory masking, no greater than reasonably required, considering the circumstances of the global pandemic and risk mitigation strategies required to respond to this communicable disease and its negative impact on Nova Scotians' lives. As the number of COVID-19 cases and related hospitalizations, ICU stays, and deaths have increased, public health measures have also evolved.
30. One of the health measures that Nova Scotia has employed to control the spread is to implement mandatory masking. Masks, when worn properly, are a valuable tool in reducing the transmission of SARS-CoV-2. The use of masking can prevent an infected person from transmitting the virus to others and use of masks, especially medical masks, can help protect a healthy individual from infection in public places, whether indoor or outdoor settings. Masking, on its own, is not sufficient to control the spread of COVID-19.
31. In response to the number of COVID-19 cases with no identifiable source, Nova Scotia implemented additional public health measures, aimed at limiting the spread in high-risk settings or in settings with high-risk activities. High risk activities are activities that have more expulsions of air than ordinary activities. With increased expulsions of air, there is an increased risk of respiratory droplets or aerosols. For example, singing, shouting, and activities that result in heavy breathing are higher risk activities. These activities also may occur in higher risk settings, such as in indoor settings or settings where individuals will remain for prolonged

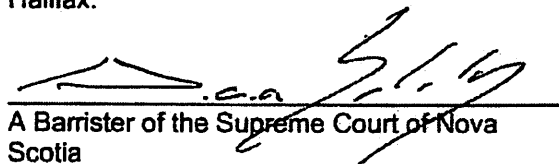
periods of time. Reducing time spent indoors with large groups of people and reducing the time spent indoors engaging in high-risk activities can reduce the risk of the spread of COVID-19. Recent evidence also shows that even outdoors, if people are not distanced from each other or masked, transmission can happen from an infectious person to someone else.

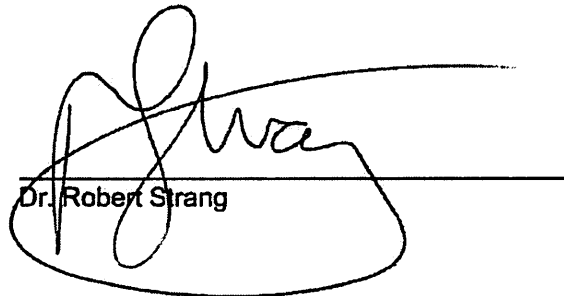
32. The available evidence shows that widespread public masking, in addition to other public health measures, such as reducing time spent indoors with large groups of people (relative to the size of the room and the spacing of people within the room) while engaging in high risk activities, can contribute to controlling the overall transmission of SARS-CoV-2. In addition, outdoor gatherings must also include measures such as restricted gatherings, and physical distancing and masking in order to prevent COVID-19 transmission.

Freedom Nova Scotia Rally

33. It is my medical opinion that if the scheduled social gathering is held on or about May 15, 2021 at Citadel Hill, in Halifax, Nova Scotia that there is a substantial risk of Covid-19 transmission among the attendees.
34. It is also my medical opinion that social gatherings similar to the one intended to be held by Freedom Nova Scotia on May 15, 2021 should not occur anywhere in the Province of Nova Scotia because there is a substantial risk of Covid-19 transmission among the attendees.

Sworn to before me on the May 12, 2021 at
Halifax.


A Barrister of the Supreme Court of Nova
Scotia


Dr. Robert Strang

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

2021

Hfx No.

This is Exhibit "A" referred to in the Affidavit of
Dr. Robert Strang sworn before me this 12th day
of May, 2021



A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

**RESTATED ORDER #2 OF THE CHIEF MEDICAL OFFICER OF HEALTH UNDER
SECTION 32 of the *HEALTH PROTECTION ACT* 2004, c. 4, s. 1.**

May 8, 2021

Update Log:

May 8, 2021: Sections 2-2.3, 3.1-3.2, 4-4.2, 10, 11, 12.1, 12.3-12.4, 13A, 19-19.2, 20, 21A, 22 and 31.1 (amened), and Sections 13.4 and 31.1.2 (new)

May 4, 3021: Sections 2.2, 28.2 and 31.1 (amended), and Section 13.3 (new)

April 29, 2021: Sections 24.3 and 31.2 (amended) and Section 31.2.1 (new)

- TO:**
- 1.) All persons residing in or present in the Province of Nova Scotia;**
 - 2.) All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia;**
 - 3.) Such other persons or entities as may be identified by the Chief Medical Officer of Health or otherwise as set out in this Order.**

ORDER made pursuant to Section 32 of the *Health Protection Act* (Nova Scotia)

AND WHEREAS Section 32 of the *Health Protection Act* states:

32 (1) Where a medical officer is of the opinion, upon reasonable and probable grounds, that:

- (a) a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary in order to decrease or eliminate the risk to the public health presented by the communicable disease.

the medical officer may by written order require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

WHEREAS COVID-19 has been identified as a communicable disease that presents a risk to public health as defined under s.4(b) of the *Health Protection Act*, and;

WHEREAS I am the Chief Medical Officer of Health for the Province of Nova Scotia and am of the opinion, upon reasonable and probable grounds, that

(a) a communicable disease (COVID-19) exists; and that there is an immediate risk of an outbreak of the communicable disease;

(b) the communicable disease presents a risk to the public health; and

(c) the requirements specified in the order are necessary to decrease or eliminate the risk to the public health presented by the communicable disease, and;

WHEREAS as the Chief Medical Officer of Health, I have determined it necessary to issue this Order to the Class of Persons to decrease the risk to public health presented by COVID-19.

Please be advised that:

I, Dr. Robert Strang, Chief Medical Officer of Health, order the following:

**PART I
ENTRY, ISOLATION AND QUARANTINE REQUIREMENTS**

1. In this Order,

(a) "self-isolate" means the requirement of any person who has COVID-19 to remain separate from others in such places and under such conditions to prevent or limit the direct or indirect transmission of COVID-19; and

(b) "self-quarantine" means the requirement of any person who has been exposed or may have been exposed to COVID-19 during its period of communicability to restrict that person's activities in order to prevent disease transmission during the incubation period for this disease.

2. Effective 8:00a.m. May 10, 2021, all persons are prohibited from entering Nova Scotia, except as stated herein or set out elsewhere in this Order:

(a) permanent residents of Nova Scotia; or

(b) persons who have engaged in essential travel outside Nova Scotia.

2.1 Where any person travels into Nova Scotia in contravention of this Order, a peace officer is hereby authorized and directed to return that person to an interprovincial border and require the person to leave the Province immediately or at such a time as may be

directed, and in doing so, may exercise authority under section 46 of the *Health Protection Act*.

2.2 For the purpose of section 2(b), persons engaged in essential travel means:

- (a) a resident of Nova Scotia whose primary employment is in another province;
- (b) a person required to participate in-person in a legal proceeding in another province;
- (c) students coming to study in Nova Scotia, or returning to their primary or family residence in Nova Scotia after studying outside Nova Scotia;
- (d) a party to a child sharing arrangement that requires entry into or exit from Nova Scotia;
- (e) a temporary foreign worker as set out in sections 7 to 7.1, a rotational worker as set out in sections 9 to 9.1, a specialized worker as set out in section 10, and a fish harvester as set out in section 11;
- (f) essential health care workers;
- (g) a person exempt from self-isolation following the exempt traveler protocol; or
- (h) a person traveling between Nova Scotia and New Brunswick for work, school and child care only, while following the Nova Scotia-New Brunswick protocol;
- (i) a person required to travel to Nova Scotia for essential health services, with accompanying support persons; or
- (j) a person who has been granted an exception in accordance with section 32.

2.3 All persons entering Nova Scotia must complete the Nova Scotia Safe Check-in form and daily digital check-ins, located at:

<https://novascotia.ca/coronavirus/travel/#self-declaration>, except:

- (a) persons following the Nova Scotia-New Brunswick protocol;
- (b) professional truck drivers; and
- (c) persons who have received compassionate exceptions.

3.1 The requirements of section 3.2 apply to all persons residing in or present in the Province of Nova Scotia who:

- (a) have travelled outside Nova Scotia or reside in the same household of a person who has travelled outside Nova Scotia; or**
- (b) are identified as a close contact of a person who has or has been diagnosed with COVID-19; or**
- (c) are identified as a person diagnosed with COVID-19; or**
- (d) have been tested for COVID-19 due to the presence of symptoms or as directed by public health and are awaiting the results of their test.**

3.2 Effective 8:00a.m. May 10, 2021, those persons listed in section 3.1 must:

- (a) self-quarantine or self-isolate, for:**
 - (i) the period commencing on the day of entry into Nova Scotia, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health, or**
 - (ii) the first day of close contact, or first day of symptoms, testing, diagnosis, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health.**
- (b) During the 14-day period, conduct themselves in such a manner as not to in any way expose any other person to infection or potential infection from COVID-19, and follow all infection control instructions given to them on the Government of Nova Scotia's website, at: <https://novascotia.ca/coronavirus/>, or given to them by Telehealth 811 staff, public health staff or any other staff of a healthcare facility to which they may seek or receive treatment.**
- (c) After the 14-day period in section 3.2(a.) has lapsed, they may cease self-isolation or self-quarantine if they do not exhibit symptoms of COVID-19.**

3.3 All persons are encouraged to complete the online assessment tool should they exhibit symptoms of COVID-19.

3.4 For greater certainty, persons required to self-isolate or self-quarantine in accordance with section 3.2 must remain in their residence or residence grounds and otherwise remove themselves from the presence of others in public while they may be infectious during the 14-day period, so that all precautions necessary to protect others are in place. Specifically, such persons must not enter any buildings, public transportation, or other enclosed spaces (other than their residence) where other people are present.

3.5 Notwithstanding section 3.2(a):

(a) persons who receive a negative COVID-19 test result after being referred for testing by the online assessment tool due to the presence of COVID-like symptoms may cease self-quarantine on the date of receipt of the negative test result.

(b) persons who are required to self-isolate or self-quarantine may leave their residence:

**(i) to undergo COVID-19 testing as directed by a Medical Officer of Health;
or**

(ii) for 1 outing per day for outdoor exercise within walking/running distance of their home or isolation site for a maximum of 1 hour.

4. Notwithstanding section 3.1(a), persons who reside in the same household as a person who has travelled into Nova Scotia or is returning to Nova Scotia from any geographic location outside Nova Scotia for essential travel, are not required to self-quarantine if the traveller, during their 14-day period of self-quarantine, meets all of the following criteria:

4.1 For essential travel set out in subsections 2.2, the traveller:

(a) stays at their place of residence;

(b) has their own separate room in the home (e.g. separate bedroom, basement or attic);

(c) sanitizes their hands before leaving the separate room;

(d) wears a non-medical mask when outside of their separate room;

(e) avoids being in the same space as other household members;

(f) has their own bathroom or if sharing a bathroom then cleans high touch surfaces (e.g. doorknob, tap, toilet handle, sink, etc.) after each use;

(g) has food and beverages prepared by others and accesses them in a non-contact manner;

(h) does not share dishes, drinking glasses, cups, eating utensils, towels, bedding or other items with others in the home;

(i) keeps their personal items (e.g. toothbrush, cups, cell phones, tablets, laptops, etc.) separate from those belonging to others; and

(j) does not share food, drinks or cigarettes or any other items that are put in the mouth.

4.2 For greater clarity, a person who travels to Nova Scotia from any geographic location outside Nova Scotia for non-essential travel must self-quarantine in accordance with section 3.2.

5. Notwithstanding sections 2 and 3.1, persons who are well and showing no symptoms of COVID-19 may enter Nova Scotia for the purposes of facilitating child sharing between parents under an order or agreement providing for joint custody, and in such instances, both the persons facilitating custody and children showing no symptoms of COVID-19 are exempt from the requirement to self-quarantine.

5.1 Further to section 5, parents and children entering or leaving Nova Scotia for the purposes of facilitating child sharing arrangements must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>.

6. Notwithstanding sections 2 and 3.1, individuals who are well and showing no symptoms of COVID-19 and are engaged in a legal proceeding in Nova Scotia, whether the accused, victim, witness, party or lawyer in such proceeding, may enter Nova Scotia for participation in the legal proceeding and are exempt from self-quarantine if the person adheres to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

7. An employer or contractor of any Temporary Foreign Worker entitled to enter Nova Scotia pursuant to the Federal Order in Council 2021-0076, 2021-0078, as amended, must first, before the Temporary Foreign Worker enters Nova Scotia, satisfy me, as Chief Medical Officer of Health, that the employer or contractor has made adequate provision for compliance with:

- (a) the federal quarantine rules applicable to the Temporary Foreign Worker; and
- (b) the self-quarantine requirements set out in section 3.2 of this Order.

7.1 In addition, the employer or contractor and the Temporary Foreign Worker must, for the duration of the entire work period in Nova Scotia:

- (a) adhere to all applicable terms and conditions of this Order; and
- (b) adhere to the COVID-19 Protocol for Temporary Foreign Workers Employed in Agriculture and Seafood Sectors established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-temporary-foreign-workers-agriculture-and-seafood-sectors-en.pdf>.

(c) comply with any direction issued by me, as Chief Medical Officer of Health, or a Medical Officer of Health with respect to the Temporary Foreign Worker and their employment in Nova Scotia.

8. Notwithstanding sections 2 and 3.1, persons who are required to travel to Nova Scotia or outside Nova Scotia for essential health services, with accompanying support persons as permitted by health authority policy, are exempt from the requirement to self-quarantine but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

9. For the purpose of section 9.1, “rotational worker” means a person who lives in Nova Scotia and travels to work in another province or territory in Canada on a regular schedule or travels outside Canada on a regular schedule and is exempt from self-quarantine under the federal *Quarantine Act*.

9.1 Notwithstanding sections 2 and 3.1, rotational workers must adhere to the self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Rotational-Workers.pdf>.

10. Notwithstanding sections 2 and 3.1, specialized workers required to enter Nova Scotia from any geographic location outside Nova Scotia to perform urgent critical infrastructure work that cannot be done by individuals from within any of these provinces must adhere to self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Specialized-Workers.pdf>.

11. Notwithstanding sections 2 and 3.1, fish harvesters required to enter Nova Scotia from any geographic location outside Nova Scotia to perform the commercial or licensed activity of catching fish and other seafood for market or other approved activities, excluding recreational fishing, must adhere to self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-fish-harvesters-en.pdf>.

12.1 Notwithstanding section 3.1, workers who are essential to the movement of people and goods, and who must enter Nova Scotia as part of their duty requirements, are exempt from the requirement to self-quarantine, particularly:

(a) healthy workers in the trade and transportation sector who are employed in the movement of goods and people across the Nova Scotia border by land, air, or water, including truck drivers, crew, maintenance and operational workers on any plane, train or ship;

(b) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service;
and

(c) first responders, including police, fire, EHS paramedic workers and essential healthcare workers.

but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

12.2 For greater clarity, airline crew employed in the movement of people and goods and who are required to travel to Nova Scotia or from Nova Scotia to carry out their work duties are exempt from the self-quarantine requirements set out in section 3.2.

12.3 Notwithstanding section 3.1, persons who reside in Nova Scotia or New Brunswick and are required to cross the Nova Scotia land border on a regular ongoing basis to work, attend a school or post-secondary institution, or access child care located in Nova Scotia or New Brunswick are exempt from the requirement to self-quarantine if that person follows the travel protocol at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-Nova-Scotia-New-Brunswick.pdf>.

12.4 Persons exempt under sections 12.1 to 12.3 must practice physical distancing of 2 metres (6 feet) to the best of their ability, follow all public health recommendations, closely self-monitor and must self-isolate or self-quarantine should they exhibit any COVID-19 symptoms as set out in the online assessment tool.

PART II PHYSICAL DISTANCING, GATHERING LIMITS, MASKS AND FACE COVERINGS

13A Effective 8:00a.m. May 10, 2021, except where otherwise stated in this Order the requirements for physical distancing, gathering limits, masks and face coverings apply to all persons present and residing in Nova Scotia.

13. All persons present and residing in Nova Scotia must maintain physical distancing of 2 metres (6 feet).

13.1 All persons present and residing in Nova Scotia must not participate in any gatherings, whether indoors or outdoors, unless subject to a specific exception set out in this Order.

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing same the household, and are not required to practice physical distancing; and

(b) where the number of persons living in the same household is 2 persons or less, they may gather together with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing.

13.3 Notwithstanding section 13.1, persons from one household may gather outdoors with persons from another household to engage in an outdoor activity such as a walk or play but must adhere to the physical distancing requirements of section 13.

13.4 Notwithstanding sections 13.1 and 13.2 and for greater certainty, parties to a child sharing arrangement, or an order or agreement providing for joint custody:

(a) may facilitate and participate in such child sharing or custody arrangement between households,

but

(b) must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>
if a parent or child develops symptoms or tests positive for COVID-19.

14. Notwithstanding section 13.1, persons may engage in outdoor physical activity while adhering to the gathering limitations set out in section 13.2 or the gathering limitations while participating in an outdoor fitness class and other recreational or leisure activities as set out in section 28.2, and in doing so, must adhere to physical distancing requirements of 2 metres (6 feet) as set out in section 13.

15. Persons may engage in, and business and organizations may host the following events and activities in-person, whether indoors or outdoors:

(a) weddings; or

(b) funerals,

while adhering to the following:

(a) a maximum of 5 persons, plus the officiant; and

(b) all persons in attendance must practice physical distancing, except persons residing in the same household as set out in section 13.2(a) or additional persons as set out in section 13.2(b).

15.1 Persons may not engage in, and persons, business and organizations may not host the following events and activities in-person:

(a) social events;

- (b) arts and culture events;
- (c) sports, recreation and physical activity events;
- (d) special events;
- (e) festivals;
- (f) faith gatherings;
- (g) wedding receptions; or
- (h) funeral visitation or receptions,

but may host these events virtually while adhering to a maximum of 5 persons in one location to support the delivery of the event and complying with the physical distancing requirements set out in section 13.

15.2 Any person, business or organization that hosts an event authorized by sections 15 or 15.1 is responsible for maintaining oversight of the gathering and for ensuring that all persons in attendance comply with the requirements of this Order.

15.3 No person may engage in and no person, business or organization may host:

- (a) organized sport practice, training, games, competitions, or tournaments (recreational, amateur, and professional), or
- (b) organized arts and culture rehearsals or in-person performances.

15.4 No person, business or organization may host a formal in-person meeting or training.

15.4.1 Notwithstanding section 15.4, a business or organization may host a mental health and addictions support group meeting while adhering to the following:

- (a) a maximum of 10 persons in attendance; and
- (b) all persons in attendance must adhere to masking and physical distancing requirements of 2 metres (6 feet) set out in this Order.

15.4.2 Notwithstanding section 15.4, a business or organization may carry out meetings and training that are required for safety and essential operation.

16. For greater clarity, physical distancing and the person limit rule set out in sections 13 and 13.1 do not apply to the following organizations, activities, persons, or places:

- (a) hospitals as defined in the *Hospitals Act* and a health authority as defined in the *Health Authorities Act*;
- (b) profit, not-for-profit or government operated Department of Community Services funded organizations or representatives that are covered under the *Homes for Special Care Act* and the *Children and Family Services Act* including places of safety for children and youth, and customized placements for persons with disabilities;
- (c) profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* or home care agencies funded under the *Homemaker Services Act*;
- (d) persons providing care under the self-managed care program, supportive care program, caregiver benefit program funded by the province of Nova Scotia;
- (e) persons providing support under the Independent Living Support, Supported Apartment and Supervised Apartment Programs funded by the Department of Community Services;
- (f) homeless shelters receiving operational grants from the Department of Municipal Affairs and Housing, and those operated by religious and other voluntary organizations;
- (g) unlicensed child-care facilities;
- (h) a place designated or established under the authority of the *Correctional Services Act* or the *Youth Criminal Justice Act (Canada)* for the supervision or custody of offenders and includes community-based correctional services;
- (i) any administrative tribunal, arbitration proceeding or court operating essential services in the Province under the authority of any provincial or federal enactment, including but not limited to, a justice centre or courthouse under the authority of the *Judicature Act* or a provincial court under the authority of the *Provincial Court Act* or the *Family Court Act*;
- (la) notwithstanding clause (i), the Labour Board must still comply with section 13 when conducting a vote under the *Trade Union Act*.
- (j) Emergency Medical Care Incorporated;
- (k) persons providing, servicing or repairing medical equipment, such as wheelchairs, red cross beds/equipment, home oxygen equipment;
- (l) private not-for-profit community transportation providers;

(m) food production plants; and

(n) fishing vessels.

16.1 Physical distancing requirements and the person limit set out in sections 13 and 13.1 do not apply to the following municipal entities and their contractors when carrying out their work duties:

(a) Police and Fire Services;

(b) Municipal Utilities such as water, wastewater and stormwater;

(c) Maintenance of utilities and municipal facilities;

(d) Transportation;

(e) Road maintenance/repair;

(f) Municipal ICT systems and services;

(g) Public Transit;

(h) Solid Waste, garbage and litter collection and disposal;

(i) Urban Forestry; and

(j) Municipal logistic, distribution, storage, inventory and repair services.

16.2 Physical distancing requirements and the person limit rule set out in sections 13 and 13.1 do not apply to the following provincial entities and their contractors when carrying out their work duties:

(a) Transportation and Active Transit;

(b) Infrastructure and Housing;

(c) Road maintenance/repair;

(d) Government building construction and/or repair; and

(e) Enforcement or compliance officers authorized by their statutory appointments or delegated authority to inspect, investigate and/or enforce provincial legislation while carrying out their powers pursuant to the relevant statutory authority.

17. Gatherings for sleep over camps held by a recognized business or organization are cancelled for 2021 unless otherwise amended.

18. For the purpose of sections 18.2 -18.6, a “mask” means a commercial medical or non-medical mask or a home-made mask made as per the PHAC instructions located at: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/sew-no-sew-instructions-non-medical-masks-face-coverings.html>, that covers the nose and mouth.

18.1 For the purpose of section 18.2, a “public place” means the part of the following places accessible to the public,

insofar as it is enclosed:

- (a) a retail business, a shopping centre, or a building or room of a business where personal care services are provided;
- (b) a restaurant or a liquor licensed establishment, including the kitchen and preparatory space of a restaurant or a liquor licensed establishment;
- (c) a place of worship or faith gathering;
- (d) a place where activities or services of a cultural or entertainment nature are offered;
- (e) a place where sports are played, fitness, recreational or leisure activities are carried on;
- (f) a rental hall or other place used to hold events, including conventions and conferences, or to hold receptions;
- (g) a place where municipal or provincial government services are available to the public;
- (h) a common area, including an elevator, of a tourist accommodation establishment;
- (i) a lobby, reception area or elevator in an office building;
- (j) a common area or public space on a university or college campus;
- (k) a train or bus station, a ferry terminal, or an airport;
- (m) common areas of a multi-residential building;
- (n) all common areas of private indoor workplaces;

(o) private indoor workplaces where there are:

(i) interactions with the public;

(ii) areas with poor ventilation; or

(iii) areas where physical distance as set out in section 13 cannot be maintained,

and insofar as it is outdoors:

(p) all serviced areas of a restaurant or a liquor licensed establishment, including their patios but excluding holes on the golf course that are licensed; and

(q) organized outdoors gatherings such as special or temporary events where 2 metres (6 feet) physical distancing cannot be consistently maintained.

(r) outdoors where physical distancing cannot be maintained such as playgrounds and parks.

18.2 All persons must wear a mask that covers their nose and mouth while present in a public place.

18.3 Notwithstanding section 18.3, a person is exempt from the requirement to wear a mask in a public place if the person:

(a) is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;

(b) for whom the wearing of a mask is not possible because of the person's medical condition;

(c) is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*;

(d) is in the public place receiving care or being provided a service or while participating in a physical or other activity requiring the mask be removed, in which case the person may remove the mask for the duration of the care, service or activity;

(e) removes the mask momentarily for identification or ceremonial purposes;

(f) is in a courtroom, jury room or secured area in a courthouse, or room where a proceeding or meeting of an administrative tribunal established by legislation is being held; or

(g) is a performer at a virtual event or officiant in the course of performing activities requiring vocalization such as talking or singing at an event or activity as described in sections 15 or 15.1.

18.4 All persons must wear a mask that covers their nose and mouth as defined in section 18 while travelling on vehicles providing transportation to the public, including:

(a) any municipally operated public transit, including municipally operated buses and ferries;

(b) any public passenger vehicle licensed under the *Motor Carrier Act*, including community transit vehicles, commercial vehicles (shuttle vans), and vehicles providing charters and/or tours;

(c) any school buses licensed under the *Motor Carrier Act* and any vehicles of any capacity operated by private schools recognized by the Minister of Education and Early Childhood Development;

(d) commuter vehicles and courtesy vehicles as defined under the *Motor Carrier Act*, vans, mini-buses, or buses of any passenger capacity providing services to the public;

(e) any vehicles serving residents and staff of facilities listed in section 20.1; and

(f) taxicabs regulated by municipalities under the authority of the *Motor Vehicle Act*.

18.5 Notwithstanding section 18.4, the following persons are exempt from the requirement to wear a mask while travelling on vehicles providing transportation to the public:

(a) a person is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;

(b) a person for whom the wearing of a mask is not possible because of the person's medical condition; and

(c) a person who is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*.

18.6 A person may remove the mask momentarily for identification purposes when boarding any public transit set out in section 18.4.

18.7 For greater certainty, the requirement to wear a mask, as set in section 18 and 18.4, is the minimum standard that persons and businesses must adhere to, and where

the business's plan approved in accordance with section 26.1 of this Order imposes a greater standard, then that standard applies.

19. Effective 8:00a.m. May 10, 2021:

(a) all public schools under the jurisdiction of a regional centre for education or the Conseil Scolaire Provincial are closed to students and pre-primary children and may remain open for staff to carry out work duties at the direction of the employer; and

(b) private schools are closed to students and may remain open for staff to carry out work duties at the direction of the employer.

19.1 For greater certainty, section 19(b) does not include post-secondary institutions, private career colleges or registered language schools.

19.2 Childcare facilities and family childcare homes regulated under the *Early Learning and Child Care Act*:

(a) may remain open; and

(b) directors, caregivers, staff, visitors and children over two years old must wear a mask as defined in section 18, unless subject to one of the exemptions as set out in section 18.3.

**PART III
LONG TERM CARE FACILITIES
AND
OTHER VULNERABLE POPULATIONS**

20. Effective 8:00a.m. May 10, 2021, except where otherwise stated in this Order, the restrictions on long term care facilities and other vulnerable populations apply to all persons present and residing in Nova Scotia.

20.1 Notwithstanding section 16(b) and (c) and subject to section 20.2, all for-profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* and all Adult Residential Centers and Regional Rehabilitation Centers funded and licensed by the Department of Community Services under the *Homes for Special Care Act* must comply with Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:

<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>;

20.2 All long term care facilities licenced by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act*, and all residents of such facilities must comply with the process for isolating COVID-19 positive long term care residents set out in Schedule "A", "COVID-19 Management Long Term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at: <https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.3 All long term care facilities licensed by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are closed to visitors and volunteers, except 2 designated caregivers, in accordance with the terms and conditions set out in Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at: <https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.4 All homes licensed by the Minister of Community Services for persons with disabilities under the *Homes for Special Care Act* not referred to in section 20.3 are closed to visitors.

20.5 Subject to 20.6, all residents in homes licensed by the Minister of Health and Wellness and all residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* are not permitted to have community access.

20.6 Notwithstanding section 20.5, all residents in homes licensed by the Minister of Health and Wellness and the Minister of Community Services under the *Homes for Special Care Act* may participate in drives by a designated caregiver or staff, but such outings must not include:

- (a) other passengers in the case of drives by a designated caregiver; or
- (b) stops or drive throughs.

20.7 All residents of all Adult Residential Centres and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are not permitted to have community access.

20.8 For the purpose of section 20.9, "Adult Day Program" means a planned program of activities in a professional care setting designed for older adults who require supervised care during the day, or those who are isolated and lonely. Adult day care centers enable seniors to socialize and enjoy planned activities in a group setting, while still receiving needed health services. At the same time, they offer family caregivers respite from caregiving duties while knowing that their loved one is in a safe place.

20.9 All senior's Adult Day Programs are closed, except for provision of respite care.

20.10 All Day Programs for persons with disabilities funded by the Department of Community Services are closed, except for scheduled vaccine clinics at these locations.

20.11 For greater clarity, nothing in this Order prevents the:

- (a) discharge of a COVID-19 patient from a hospital to a long-term care or residential care facility;
- (b) transfer of a COVID-19 patient from community to a long-term care or residential care facility; or
- (c) return of a COVID-19 patient who has left a long-term care or residential care facility for healthcare services back to that facility after receiving treatment at a hospital.

PART IV BUSINESSES, ORGANIZATIONS AND PROFESSIONS

21A Effective 8:00a.m. May 10, 2021, except where otherwise stated in this Order, the restrictions on businesses, organizations and professions apply to all established businesses, organizations and professions carrying on business and operating in Nova Scotia.

21.1 The *Occupational Health and Safety Act*, 1996, c.7, s.1, is hereby incorporated by reference and must be followed by all employers, contractors, constructors, suppliers, owners and employees and each shall take every precaution that is reasonable in the circumstances to ensure the health and safety of all persons at or near a workplace.

22. All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may not carry out COVID-19 Point of Care Screening Tests (PCTs) unless the business or organization:

- (a) has obtained prior approval from the Office of the Chief Medical Officer of Health; and
- (b) complies with any direction issued by me, as Chief Medical Officer of Health.

23. Subject only to specific closures or limitations directed elsewhere in this Order, all not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may continue to operate but must implement physical distancing of 2 metres (6 feet) within all workplaces and meeting spaces, except where otherwise provided in this Order.

23.1 Any not-for-profit or for-profit business or organization carrying on business in Nova Scotia that cannot maintain the physical distancing requirements set out in section 13 of this Order must limit the number of customers or clients on its premises to no more than 5 persons at a time.

24. Restaurants and liquor licensed establishments are:

(a) restricted to providing food and alcohol take-out and delivery service only; and

(b) prohibited from offering in-person dining, except to serve guests of the hotel within which a restaurant or licensed establishment is located.

24.1 Restaurants offering in-person dining service under section 24(b) must:

(a) collect and maintain records of each patron contact information that includes the following minimum data:

(i) name(s);

(ii) contact telephone number;

(iii) date; and

(iv) time,

that the patron was at the restaurant or liquor licensed establishment;

(b) retain information collected under section 24.1 for a period of 30 calendar days and destroy it on the following day immediately thereafter;

(c) provide the information collected under section 24.1 to the Chief Medical Officer of Health or his delegate in electronic form; and

(d) only use the information collected under section 24.1 for the purpose of provision to the Chief Medical Officer of Health in compliance with this Order and may not use it for any other purpose.

24.2 Liquor licensed establishments and non-liquor licensed establishments, including community centres, charities or organized clubs, are prohibited from hosting patrons for activities such as darts, pool, bingo or bowling.

25. Regulated and unregulated health professions practicing may continue to practice and provide services within their scope of practice if they have a Workplace COVID-19 Prevention Plan that has been approved by the Chief Medical Officer of Health.

26. All not for-profit, for-profit businesses, organizations and professions named in Part IV of this Order shall, as a requirement of their ongoing operations, develop and comply with a Workplace COVID-19 Prevention Plan, as amended from time to time.

26.1 In addition to the physical distancing requirements and person limit rule set out in sections 13 and 23.1, the Workplace COVID-19 Prevention Plan required by section 26 shall address the following:

- (a) how to work and interact with customers or clients;**
- (b) physical distancing in the workplace;**
- (c) cleaning;**
- (d) equipment;**
- (e) preparing employees to return to work;**
- (f) preparing for customers or clients; and**
- (g) monitoring and communicating of plan,**

and may be substantially similar to those proposals listed in Schedule "B", located at: <https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf> for similar businesses or health professionals and must be made available for review by the Chief Medical Officer of Health.

26.2 All businesses or regulated health professionals that are a member of an association listed in Schedule "B" must adopt as their Workplace COVID-19 Prevention Plan the proposal submitted by their association and must be made available for review by the Chief Medical Officer of Health.

26.3 For greater certainty, in the case of conflict between a Workplace COVID-19 Prevention Plan and this Order, the more stringent provision applies.

27. Casino Nova Scotia (Halifax and Sydney locations) and Video Lottery Terminals are closed.

28. Subject to 28.2, all not-for-profit and for-profit fitness facilities such as gyms and yoga studios, sport and recreational facilities such as pools, arenas, tennis courts, and large multipurpose recreation facilities:

- (a) are closed to patrons,**
but may open
- (b) to offer virtual classes; and**

(c) to perform administrative and operational functions.

28.1 Businesses and organizations that offer indoor recreation and leisure activities such as indoor play areas, arcades, climbing facilities, dance classes and music lessons are closed.

28.2 All not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may offer outdoor fitness classes and other recreational activities up to a maximum capacity of 5 persons, or multiple groups of 5 each on their premises, while ensuring 2 metres (6 feet) physical distance between participants.

29. All personal service establishments such as hair salons, barber shops, spas, nail salons and body art establishments are closed for provision of personal services but may sell retail products in accordance with section 31.3.

30. The Art Gallery of Nova Scotia and all museums and public libraries are closed, but libraries may offer curb-side pickup and drop-off of books and other materials.

31. For the purpose of sections 31.1 and 31.2, "retail business" means a business operating on an ongoing basis at a fixed location primarily selling goods or products for use or consumption by individual purchasers.

31.1 Retail business primarily or substantially providing consumer products essential to the life, health or personal safety of individuals and animals, including:

- (a) food;
- (b) pharmaceutical products, medicine and medical devices;
- (c) personal hygiene products;
- (d) cleaning products;
- (e) baby and childcare products;
- (f) gas stations and garages;
- (g) computer and cell phone service and repair;
- (h) electronic and office supplies;
- (i) hardware supplies and home appliances;
- (j) pet and animal supplies;
- (k) gardening supplies;
- (l) workplace safety supplies; and
- (m) automobile purchases (by appointment only); and
- (n) laundromats,

may remain open but must, at all times, limit the number of customers in the store to a maximum of 25% of store capacity.

31.1.2 Effective at 8 a.m. May 8, 2021:

(a) all persons present or residing in Nova Scotian must designate one person per household to carry out purchase of products essential to the life, health or personal safety of individuals and animals; and

(b) retail businesses operating under section 31.1 to 31.2.1 must limit one person per household to enter to their business to complete purchase of products essential to the life, health or personal safety of individuals and animals,

but

(c) exceptions to (a) and (b) may be made for children and caregivers.

31.2 NSLC and their Agency Stores may remain open but must, at all times, limit the number of customers in the NSLC retail stores and their Agency Stores to a maximum of 25% of store capacity.

31.2.1 Liquor boutiques, distilleries, breweries and wineries:

(a) may remain open but must, at all times, limit the number of customers to a maximum of 25% of store capacity,

but

(b) are prohibited from offering in-person tastings, samplings or in-person dining.

31.3 All other retail businesses must restrict customer service to online, delivery, or door side or curbside pick-up and should restrict in store presence only to staff and no customers shall be permitted in such retail stores.

31.4 For greater clarity:

(a) shopping malls may remain open to facilitate the shopping as outlined in sections 31.1 to 31.3; and

(b) customers may

(i) may enter the mall to complete their shopping transaction while using contactless payment, whether for in-person shopping under section 31.1 and 31.2, or for curb-side pickup;

(ii) must go directly to the retail business to complete their shopping transaction;

(iii) may line up outside the entrance of the retail business while maintaining a physical distance of at least 2 metres (6 feet) from other

persons inside the shopping mall; and

(iv) must wear a mask as defined in section 18 while in the shopping mall to complete their purchase, unless they are entitled to any of the exceptions set out in section 18.3,

(c) no line up outside any one retail business located inside the shopping mall shall exceed 5 persons;

(d) the person responsible for the shopping mall must ensure that:

(i) music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db;

(ii) customers are not permitted to loiter in any area of the shopping mall; and

(iii) directional markings are provided to manage the flow of persons within the mall,

(e) the non-retail public areas in the mall shall be closed, other than for traffic flow/store access and washroom access; and

(f) notwithstanding clause 31.4(e), food courts are closed to the public but:

(i) food court vendors may provide services to persons who work in the mall;

(ii) tables in food courts may only be used by persons who work in the mall;

(iii) a minimum of 2 metres (6 feet) is maintained between patrons seated at food court tables and between other patrons in the food court;

(iv) patrons must wear a mask as defined in section 18 except when consuming food or beverages; and

(iv) each food court vendor may offer takeout food service.

31.5 For greater certainty, shopping malls are closed to the public for in-person shopping as set out in section 31.4 and persons are prohibited from going to a mall except to complete a purchase transaction as set out in section 31.4 or to enter their workplace located in the mall.

**PART V
EXCEPTIONS**

32. Under exceptional circumstances and under the authority granted to me as the Chief Medical Officer of Health under Part I of the *Health Protection Act*, I may exercise discretion to grant an exception to any term and condition of this Order.

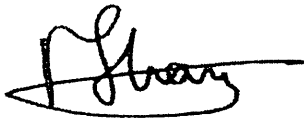
**PART VI
PENALTIES**

33. Any direction provided by a medical officer of health to a person, business, organization or other entity pertaining to COVID-19 and the terms and conditions of this Order must be followed.

34. Failure to comply with this health protection order may be considered a breach of this Order issued under the *Health Protection Act* and may result in penalties under the *Act*.

This Order remains in effect until notice is provided by myself, as Chief Medical Officer of Health, under the authority granted under Part I of the *Health Protection Act* and will be updated from time to time.

Signed:



Dr. Robert Strang
Chief Medical Officer of Health
Nova Scotia Department of Health and Wellness

cc The Honourable Iain Rankin, Premier of Nova Scotia
The Honourable Zach Churchill, Minister of Health and Wellness
Laura Lee Langley, Deputy to the Premier and Clerk of Executive Council
Dr. Kevin Orrell, Deputy Minister of Health and Wellness
Dr. Shelley Deeks, Acting Deputy Chief Medical Officer of Health
Tina M. Hall, Legal Counsel, Nova Scotia Dept. of Justice

2021

Hfx No.

This is Exhibit "B" referred to in the Affidavit of
Dr. Robert Strang sworn before me this 12th day
of May, 2021



A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

Nova Scotia COVID-19 Wave 2 and 3 Summary October 1, 2020 - April 1, 2021 NS Dept. Health & Wellness

HIGHLIGHTS

- Since March 1, 2020, there have been a total of 4152 confirmed cases of COVID-19 and 71 deaths reported.
- During Wave 3 (April 1, 2021- present):
 - 2410 confirmed cases and 5 deaths have been reported. The cases reported in Wave 3 constitute 58% of the total cases reported in Nova Scotia since March 1, 2020.
 - There have been 103 hospitalizations (non-ICU and ICU) compared to 12 during Wave 2.
 - 54% of hospitalizations occurred in individuals <60 years of age
 - 13.7% of contacts became cases, compared to 7.6% in Wave 2 suggesting that the virus is more transmissible.

NOVEL CORONAVIRUS (COVID-19)

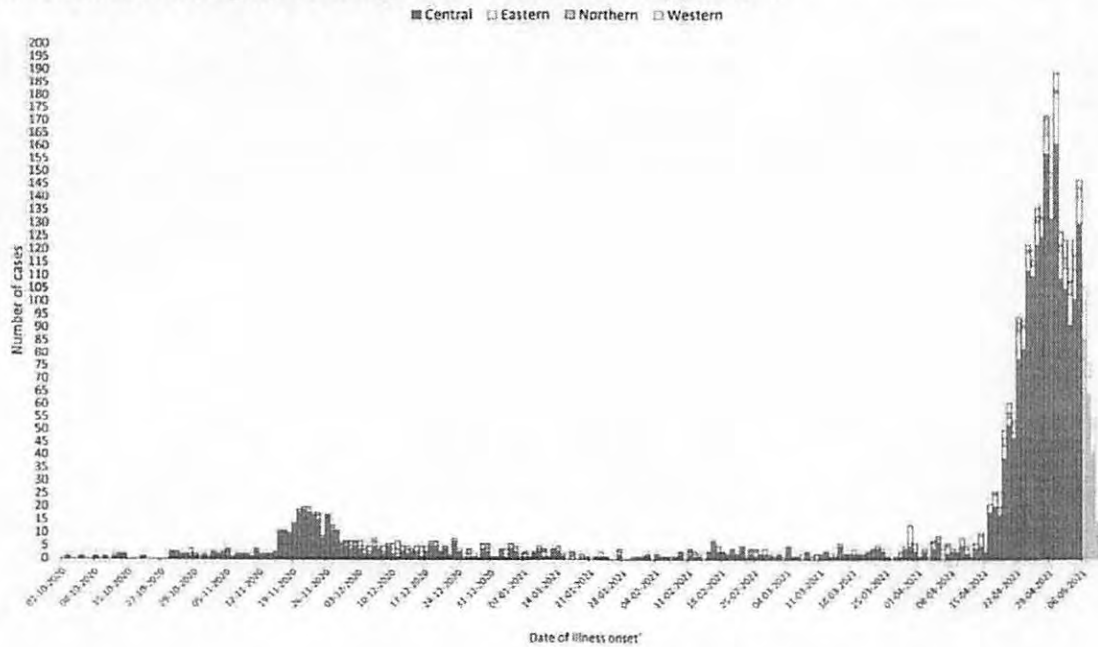
novascotia.ca/coronavirus



WAVE 2 AND 3 SUMMARY

Part One: Cases

Figure 1. Epidemic curve of confirmed and probable COVID-19 cases by Zone of residence and date of illness onset, Wave 2, and Wave 3 (October 1st 2020-Present)[†], n=3067



[†]date of illness onset is the first of: symptom onset and date of laboratory specimen collection. Due to the lag time in reporting of cases, not all cases for the previous 7 days are included.

Table 1. Summary of confirmed COVID-19 cases, COVID-19 case status, and current case prevalence rate by zone of residence, Wave 3 (Apr 1st, 2021- present)

	Cumulative Confirmed Cases	Total Resolved	Total Deceased	Current case prevalence rate per 100,000 population
Western	85	30	0	28.2
Northern	68	20	0	32.2
Eastern	205	71	0	85.2
Central	2052	693	5	300.0
NS	2410	814	5	167.2

Part 2: Serious Outcomes (Hospitalizations, ICU admissions, and Deaths)

Table 2. Most severe outcome reported among 2410 confirmed and probable cases of COVID-19, Wave 3 (Apr 1st, 2021- present)

Most severe outcome	Wave 3 (Apr 1, 2021 - present)		
	Total		Age median
	n	%	
Hospitalized - non-ICU	76	3.2%	53.5
Hospitalized - ICU	27	1.1%	56.5
Deceased	5	0.2%	78

Number of patients currently hospitalized (excl. ICU):	54
Number of patients currently in ICU:	10

Note: data for patients currently hospitalized is based on inpatient encounters (NSHA and IWK Inpatient Census Data from Meditech and STAR registration system as of 00:00 the day of reporting) with a COVID-19 positive laboratory result or active case status.

Note: Age and sex data for deaths are only reported for those who have information available in Panorama at the time of report and is subject change as new information becomes available.

Part 3: Transmission and contacts

Table 3a: Contacts of COVID-19 cases who have also become cases, Wave 2 and 3

Indicator	WAVE 2 (Oct 1, 2020 – Mar 31, 2021)	WAVE 3 (≥ Apr 1, 2021)
# of contacts who became a case	389	1483
% of contacts who became a case	7.6	13.7

The proportion of contacts who have become cases has almost doubled from Wave 2 to Wave 3, reflecting the increased transmissibility of the virus.

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

and

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

Respondent

Affidavit of Hayley Crichton

I make oath/affirm and give evidence as follows:

1. I am Hayley Crichton, the Director of Public Safety and Investigations with the Department of Justice for the Province of Nova Scotia.
2. I have personal knowledge of the evidence sworn to in this Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. In the Nova Scotia context, mask requirements and adherence to restrictions are set out in the Public Health Orders.
5. The Restated Public Health Order issued under section 32 of the *Health Protection Act 2004*, c. 4, s. 1 by Dr. Robert Strang, was last updated on May 8, 2021 (hereinafter, the "Public Health Order"). A true copy of the Public Health Order is attached hereto as Exhibit "A".
6. On April 23, 2021, Halifax Regional Police attended a large gathering at a private residence. 22 fines were issued as a result of this gathering as it was in contravention of the Public Health Order.
7. On April 25, 2021, RCMP attended a residence in Wolfville, Nova Scotia, at which 30 people were gathered in contravention of the Public Health Order for a party. 4 fines were issued as a result of this gathering.

8. On May 3, 2021, New Glasgow Police attended a private residence in Trenton, Nova Scotia. Eight people were gathered in contravention of the Public Health Order and were subsequently ticketed.
9. Worldwide Rally for Freedom and Democracy is a global movement and organizer that has been developed with the explicit objective of spreading anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric.
10. Worldwide Rally for Freedom and Democracy has planned a global event entitled, The Worldwide Demonstration May 15, 2021. The associated open Facebook event page has a total of 31,000 followers.
11. In Nova Scotia, participation in the Worldwide Rally for Freedom and Democracy global events are organized by the local Facebook group "Freedom Nova Scotia". The Freedom Nova Scotia Facebook open group has a total of 896 followers and the related Instagram account has 100 followers.
12. On March 20, 2021, Freedom Nova Scotia organized an open event on Facebook to rally against mask wearing and restrictions on Citadel Hill in Halifax. Attendees gathered in a large group of approximately 100 people, the attendees were not wearing masks and were not maintaining six feet of physical distance, in direct contravention of the Public Health Order. The event drew media attention.
13. A picture of the event derived from CTV News is attached hereto as **Exhibit "B"**.
14. **Exhibit "B"** shows a large gathering of people who can be observed to not be wearing masks, nor maintaining a distance of six feet from one another.
15. On March 20, 2021, Freedom Nova Scotia also organized an open event on Facebook to rally against mask wearing and restrictions at Alderney Landing. 25 people responded as "going" and 45 responded as "interested".
16. Freedom Nova Scotia has also organized rallies in the greater Halifax area on March 28, 2021 (Spring Garden Road), April 1, 2021 (Alderney Landing) and May 1, 2021 (Halifax). The rallies were in contravention of the Public Health Order.
17. Freedom Nova Scotia has scheduled an event for Saturday May 15, 2021, at 1:00pm entitled, "Worldwide Rally for Freedom – Halifax" in support of anti-mask rhetoric. The event is open and there are 261 comments on the event page, with 88 people listed as "interested" and 66 people listed as "going".
18. During the week of May 3rd, 2021, Halifax Regional Police was contacted by Freedom Nova Scotia event participant Jane Doe via telephone. Jane Doe requested protection for the rally participants who will attend Citadel Hill to protest the COVID-19 lockdown and restrictions. I am advised by Halifax Regional Police and do verily believe that the Halifax Regional Police advised Jane Doe that any such gathering would contravene of the Public Health Order, and potentially the Travel Directive issued under the *Emergency Measures Act* 1990, c. 8, s. 1; 2005, c. 48, s. 1. (should people travel in from outside HRM).
19. The Halifax Regional Police provided the Province with information pertaining to Freedom Nova Scotia, Worldwide Rally for Freedom and Democracy, and the related social media posts advertising the event scheduled for Saturday May 15, 2021, at 1:00 pm entitled, "Worldwide Rally for Freedom – Halifax".

20. The information provided by the Halifax Regional Police to the Province references multiple rallies hosted by Freedom Nova Scotia. The information provided by the Halifax Regional Police contains photographs depicting attendees gathering without masks and in large groups in direct contravention of the Public Health Order. This is supplemented by screenshots of the open group in which commenters have requested Halifax Regional Police and Government intervention. A true copy of the information set out above in this my sworn affidavit provided by the Halifax Regional Police is attached hereto as **Exhibit "C"**.
21. On May 11, 2021, the Freedom Nova Scotia open Facebook page included the following post, "Here is our daily event update. Thank you for all the amazing support and shares people! We have already beat the highest amount of shares previous rallies had! We were at 77 last night – let's make it to 100 today! And don't forget to let your fellow freedom fighters know they can invite their people from the event page and the guest list is private. Four more sleeps until we climb the hill!!!". A screenshot of this post is attached hereto as **Exhibit "D"**.
22. A Worldwide Freedom Rally is also scheduled for Barrington, Nova Scotia on May 15, 2021 at 6pm at the Barrington baseball field. A true copy of the social media post for the Barrington event is attached hereto as **Exhibit "E"**.
23. A Worldwide Freedom Rally is also scheduled for Dartmouth, Nova Scotia (Alderney Landing) on May 15, 2021 at 1 pm. A true copy of the social media post for the Dartmouth event is attached hereto as **Exhibit "F"**.
24. Similar anti-mask, anti-vaccine, anti-restriction protests have taken place across Nova Scotia that have included gatherings of people who not wearing masks and were not maintaining six feet of physical distance, in direct contravention of the Public Health Order.
25. On April 24, 2021, an event was planned at the New Brunswick and Nova Scotia border to protest COVID-19 restrictions including border closures and mask requirements by disrupting traffic on Hwy 104. The event organizer Tasha Everett posted the following to her open Facebook page, "12PM tomorrow! Be there! Its time to make more noise than ever before! Truckers have our backs, and are planning to block the highways with us. United we stand, Divided we fall. A screenshot of this post is attached hereto as **Exhibit "G"**.
26. On May 9, 2021, Kings District RCMP were called to Weston Christian Fellowship Church in Weston, Nova Scotia. 26 people were gathered at the church in contravention of the Public Health Order. 26 fines were laid against individuals and a larger fine was laid against the organizer.
27. On May 12, 2021 I received information from the Royal Canadian Mounted Police (RCMP) regarding a rally held on May 9, 2021, and do verily believe the following:

PURPOSE:

To update the Attorney General of a protest, in relation to the continued border restrictions between Nova Scotia and New Brunswick that occurred on May 9, 2021.

BACKGROUND:

A group on Facebook, identified as "Support to OPEN The NS/NB Border", organized a protest for May 9, 2021 at 12:00 pm, at the NS Tourism Centre along Hwy 104, immediately as you enter Nova Scotia.

Organizers indicated that this was strictly about the border closure and the impact it is having on everyday lives.

CURRENT STATUS:

An assembly took place as scheduled on May 9, at 12:00 pm.

Approximately 20 protesters assembled along the Nova Scotia side of the Provincial border, Highway 104 Eastbound lane.

At approximately 12:30 pm, a passenger from a vehicle involved in the protest was seen throwing traffic cones into the ditch which had been positioned to block off exit 1.

The interaction between the RCMP and the vehicle passenger was met with hostility from the occupants of the vehicle.

Shortly after, a hostile crowd of 15-20 people formed around the police officer.

Protesters were recording police and expressed negative comments.

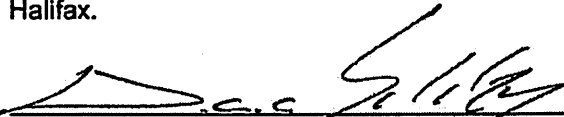
Protesters were not wearing masks or social distancing.

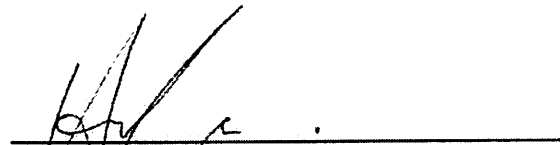
All attendees left by 2:30 pm.

Commentary from attendees suggests protests will be a weekly occurrence.

28. On May 10, 2021, Dena Churchill posted an advertisement for the May 15, 2021 on her facebook page, among other anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric.
29. Historical public gatherings organized by Freedom Nova Scotia and others have not complied with the requirements of COVID-19 Emergency Health Orders issued under section 32 of the Health Protection Act, including but not limited to:
 - a. masking requirements;
 - b. attendance limits applicable to indoor or outdoor gatherings; and
 - c. minimum physical distancing requirements.

Sworn to before me on the May 12, 2021 at
Halifax.


Duane A. Eddy
A Barrister of the Supreme Court of Nova
Scotia

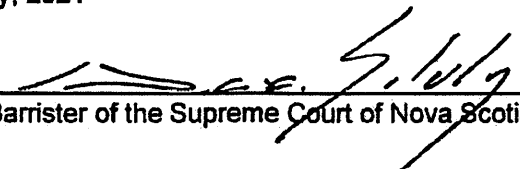

Hayley Crichton

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

2021

Hfx No.

This is Exhibit "A" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021


A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

**RESTATED ORDER #2 OF THE CHIEF MEDICAL OFFICER OF HEALTH UNDER
SECTION 32 of the *HEALTH PROTECTION ACT* 2004, c. 4, s. 1.**

May 8, 2021

Update Log:

May 8, 2021: Sections 2-2.3, 3.1-3.2, 4-4.2, 10, 11, 12.1, 12.3-12.4, 13A, 19-19.2, 20, 21A, 22 and 31.1 (amended), and Sections 13.4 and 31.1.2 (new)

May 4, 2021: Sections 2.2, 28.2 and 31.1 (amended), and Section 13.3 (new)

April 29, 2021: Sections 24.3 and 31.2 (amended) and Section 31.2.1 (new)

- TO:**
- 1.) All persons residing in or present in the Province of Nova Scotia;**
 - 2.) All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia;**
 - 3.) Such other persons or entities as may be identified by the Chief Medical Officer of Health or otherwise as set out in this Order.**

ORDER made pursuant to Section 32 of the *Health Protection Act* (Nova Scotia)

AND WHEREAS Section 32 of the *Health Protection Act* states:

32 (1) Where a medical officer is of the opinion, upon reasonable and probable grounds, that:

- (a) a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary in order to decrease or eliminate the risk to the public health presented by the communicable disease.

the medical officer may by written order require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

WHEREAS COVID-19 has been identified as a communicable disease that presents a risk to public health as defined under s.4(b) of the *Health Protection Act*, and;

WHEREAS I am the Chief Medical Officer of Health for the Province of Nova Scotia and am of the opinion, upon reasonable and probable grounds, that

(a) a communicable disease (COVID-19) exists; and that there is an immediate risk of an outbreak of the communicable disease;

(b) the communicable disease presents a risk to the public health; and

(c) the requirements specified in the order are necessary to decrease or eliminate the risk to the public health presented by the communicable disease, and;

WHEREAS as the Chief Medical Officer of Health, I have determined it necessary to issue this Order to the Class of Persons to decrease the risk to public health presented by COVID-19.

Please be advised that:

I, Dr. Robert Strang, Chief Medical Officer of Health, **order** the following:

**PART I
ENTRY, ISOLATION AND QUARANTINE REQUIREMENTS**

1. In this Order,

(a) "self-isolate" means the requirement of any person who has COVID-19 to remain separate from others in such places and under such conditions to prevent or limit the direct or indirect transmission of COVID-19; and

(b) "self-quarantine" means the requirement of any person who has been exposed or may have been exposed to COVID-19 during its period of communicability to restrict that person's activities in order to prevent disease transmission during the incubation period for this disease.

2. Effective 8:00a.m. May 10, 2021, all persons are prohibited from entering Nova Scotia, except as stated herein or set out elsewhere in this Order:

(a) permanent residents of Nova Scotia; or

(b) persons who have engaged in essential travel outside Nova Scotia.

2.1 Where any person travels into Nova Scotia in contravention of this Order, a peace officer is hereby authorized and directed to return that person to an interprovincial border and require the person to leave the Province immediately or at such a time as may be

directed, and in doing so, may exercise authority under section 46 of the *Health Protection Act*.

2.2 For the purpose of section 2(b), persons engaged in essential travel means:

- (a) a resident of Nova Scotia whose primary employment is in another province;
- (b) a person required to participate in-person in a legal proceeding in another province;
- (c) students coming to study in Nova Scotia, or returning to their primary or family residence in Nova Scotia after studying outside Nova Scotia;
- (d) a party to a child sharing arrangement that requires entry into or exit from Nova Scotia;
- (e) a temporary foreign worker as set out in sections 7 to 7.1, a rotational worker as set out in sections 9 to 9.1, a specialized worker as set out in section 10, and a fish harvester as set out in section 11;
- (f) essential health care workers;
- (g) a person exempt from self-isolation following the exempt traveler protocol; or
- (h) a person traveling between Nova Scotia and New Brunswick for work, school and child care only, while following the Nova Scotia-New Brunswick protocol;
- (i) a person required to travel to Nova Scotia for essential health services, with accompanying support persons; or
- (j) a person who has been granted an exception in accordance with section 32.

2.3 All persons entering Nova Scotia must complete the Nova Scotia Safe Check-in form and daily digital check-ins, located at:

<https://novascotia.ca/coronavirus/travel/#self-declaration>, except:

- (a) persons following the Nova Scotia-New Brunswick protocol;
- (b) professional truck drivers; and
- (c) persons who have received compassionate exceptions.

3.1 The requirements of section 3.2 apply to all persons residing in or present in the Province of Nova Scotia who:

(a) have travelled outside Nova Scotia or reside in the same household of a person who has travelled outside Nova Scotia; or

(b) are identified as a close contact of a person who has or has been diagnosed with COVID-19; or

(c) are identified as a person diagnosed with COVID-19; or

(d) have been tested for COVID-19 due to the presence of symptoms or as directed by public health and are awaiting the results of their test.

3.2 Effective 8:00a.m. May 10, 2021, those persons listed in section 3.1 must:

(a) self-quarantine or self-isolate, for:

(i) the period commencing on the day of entry into Nova Scotia, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health, or

(ii) the first day of close contact, or first day of symptoms, testing, diagnosis, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health.

(b) During the 14-day period, conduct themselves in such a manner as not to in any way expose any other person to infection or potential infection from COVID-19, and follow all infection control instructions given to them on the Government of Nova Scotia's website, at: <https://novascotia.ca/coronavirus/>, or given to them by Telehealth 811 staff, public health staff or any other staff of a healthcare facility to which they may seek or receive treatment.

(c) After the 14-day period in section 3.2(a.) has lapsed, they may cease self-isolation or self-quarantine if they do not exhibit symptoms of COVID-19.

3.3 All persons are encouraged to complete the online assessment tool should they exhibit symptoms of COVID-19.

3.4 For greater certainty, persons required to self-isolate or self-quarantine in accordance with section 3.2 must remain in their residence or residence grounds and otherwise remove themselves from the presence of others in public while they may be infectious during the 14-day period, so that all precautions necessary to protect others are in place. Specifically, such persons must not enter any buildings, public transportation, or other enclosed spaces (other than their residence) where other people are present.

3.5 Notwithstanding section 3.2(a):

(a) persons who receive a negative COVID-19 test result after being referred for testing by the online assessment tool due to the presence of COVID-like symptoms may cease self-quarantine on the date of receipt of the negative test result.

(b) persons who are required to self-isolate or self-quarantine may leave their residence:

(i) to undergo COVID-19 testing as directed by a Medical Officer of Health;
or

(ii) for 1 outing per day for outdoor exercise within walking/running distance of their home or isolation site for a maximum of 1 hour.

4. Notwithstanding section 3.1(a), persons who reside in the same household as a person who has travelled into Nova Scotia or is returning to Nova Scotia from any geographic location outside Nova Scotia for essential travel, are not required to self-quarantine if the traveller, during their 14-day period of self-quarantine, meets all of the following criteria:

4.1 For essential travel set out in subsections 2.2, the traveller:

(a) stays at their place of residence;

(b) has their own separate room in the home (e.g. separate bedroom, basement or attic);

(c) sanitizes their hands before leaving the separate room;

(d) wears a non-medical mask when outside of their separate room;

(e) avoids being in the same space as other household members;

(f) has their own bathroom or if sharing a bathroom then cleans high touch surfaces (e.g. doorknob, tap, toilet handle, sink, etc.) after each use;

(g) has food and beverages prepared by others and accesses them in a non-contact manner;

(h) does not share dishes, drinking glasses, cups, eating utensils, towels, bedding or other items with others in the home;

(i) keeps their personal items (e.g. toothbrush, cups, cell phones, tablets, laptops, etc.) separate from those belonging to others; and

(j) does not share food, drinks or cigarettes or any other items that are put in the mouth.

4.2 For greater clarity, a person who travels to Nova Scotia from any geographic location outside Nova Scotia for non-essential travel must self-quarantine in accordance with section 3.2.

5. Notwithstanding sections 2 and 3.1, persons who are well and showing no symptoms of COVID-19 may enter Nova Scotia for the purposes of facilitating child sharing between parents under an order or agreement providing for joint custody, and in such instances, both the persons facilitating custody and children showing no symptoms of COVID-19 are exempt from the requirement to self-quarantine.

5.1 Further to section 5, parents and children entering or leaving Nova Scotia for the purposes of facilitating child sharing arrangements must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>.

6. Notwithstanding sections 2 and 3.1, individuals who are well and showing no symptoms of COVID-19 and are engaged in a legal proceeding in Nova Scotia, whether the accused, victim, witness, party or lawyer in such proceeding, may enter Nova Scotia for participation in the legal proceeding and are exempt from self-quarantine if the person adheres to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

7. An employer or contractor of any Temporary Foreign Worker entitled to enter Nova Scotia pursuant to the Federal Order in Council 2021-0076, 2021-0078, as amended, must first, before the Temporary Foreign Worker enters Nova Scotia, satisfy me, as Chief Medical Officer of Health, that the employer or contractor has made adequate provision for compliance with:

- (a) the federal quarantine rules applicable to the Temporary Foreign Worker; and**
- (b) the self-quarantine requirements set out in section 3.2 of this Order.**

7.1 In addition, the employer or contractor and the Temporary Foreign Worker must, for the duration of the entire work period in Nova Scotia:

- (a) adhere to all applicable terms and conditions of this Order; and**
- (b) adhere to the COVID-19 Protocol for Temporary Foreign Workers Employed in Agriculture and Seafood Sectors established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-temporary-foreign-workers-agriculture-and-seafood-sectors-en.pdf>.**

- (c) comply with any direction issued by me, as Chief Medical Officer of Health, or a Medical Officer of Health with respect to the Temporary Foreign Worker and their employment in Nova Scotia.**

8. Notwithstanding sections 2 and 3.1, persons who are required to travel to Nova Scotia or outside Nova Scotia for essential health services, with accompanying support persons as permitted by health authority policy, are exempt from the requirement to self-quarantine but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

9. For the purpose of section 9.1, "rotational worker" means a person who lives in Nova Scotia and travels to work in another province or territory in Canada on a regular schedule or travels outside Canada on a regular schedule and is exempt from self-quarantine under the federal *Quarantine Act*.

9.1 Notwithstanding sections 2 and 3.1, rotational workers must adhere to the self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Rotational-Workers.pdf>.

10. Notwithstanding sections 2 and 3.1, specialized workers required to enter Nova Scotia from any geographic location outside Nova Scotia to perform urgent critical infrastructure work that cannot be done by individuals from within any of these provinces must adhere to self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Specialized-Workers.pdf>.

11. Notwithstanding sections 2 and 3.1, fish harvesters required to enter Nova Scotia from any geographic location outside Nova Scotia to perform the commercial or licensed activity of catching fish and other seafood for market or other approved activities, excluding recreational fishing, must adhere to self-quarantine requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-fish-harvesters-en.pdf>.

12.1 Notwithstanding section 3.1, workers who are essential to the movement of people and goods, and who must enter Nova Scotia as part of their duty requirements, are exempt from the requirement to self-quarantine, particularly:

(a) healthy workers in the trade and transportation sector who are employed in the movement of goods and people across the Nova Scotia border by land, air, or water, including truck drivers, crew, maintenance and operational workers on any plane, train or ship;

(b) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service; and

(c) first responders, including police, fire, EHS paramedic workers and essential healthcare workers.

but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

12.2 For greater clarity, airline crew employed in the movement of people and goods and who are required to travel to Nova Scotia or from Nova Scotia to carry out their work duties are exempt from the self-quarantine requirements set out in section 3.2.

12.3 Notwithstanding section 3.1, persons who reside in Nova Scotia or New Brunswick and are required to cross the Nova Scotia land border on a regular ongoing basis to work, attend a school or post-secondary institution, or access child care located in Nova Scotia or New Brunswick are exempt from the requirement to self-quarantine if that person follows the travel protocol at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-Nova-Scotia-New-Brunswick.pdf>.

12.4 Persons exempt under sections 12.1 to 12.3 must practice physical distancing of 2 metres (6 feet) to the best of their ability, follow all public health recommendations, closely self-monitor and must self-isolate or self-quarantine should they exhibit any COVID-19 symptoms as set out in the online assessment tool.

PART II PHYSICAL DISTANCING, GATHERING LIMITS, MASKS AND FACE COVERINGS

13A Effective 8:00a.m. May 10, 2021, except where otherwise stated in this Order the requirements for physical distancing, gathering limits, masks and face coverings apply to all persons present and residing in Nova Scotia.

13. All persons present and residing in Nova Scotia must maintain physical distancing of 2 metres (6 feet).

13.1 All persons present and residing in Nova Scotia must not participate in any gatherings, whether indoors or outdoors, unless subject to a specific exception set out in this Order.

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing same the household, and are not required to practice physical distancing; and

(b) where the number of persons living in the same household is 2 persons or less, they may gather together with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing.

13.3 Notwithstanding section 13.1, persons from one household may gather outdoors with persons from another household to engage in an outdoor activity such as a walk or play but must adhere to the physical distancing requirements of section 13.

13.4 Notwithstanding sections 13.1 and 13.2 and for greater certainty, parties to a child sharing arrangement, or an order or agreement providing for joint custody:

(a) may facilitate and participate in such child sharing or custody arrangement between households,

but

(b) must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>
if a parent or child develops symptoms or tests positive for COVID-19.

14. Notwithstanding section 13.1, persons may engage in outdoor physical activity while adhering to the gathering limitations set out in section 13.2 or the gathering limitations while participating in an outdoor fitness class and other recreational or leisure activities as set out in section 28.2, and in doing so, must adhere to physical distancing requirements of 2 metres (6 feet) as set out in section 13.

15. Persons may engage in, and business and organizations may host the following events and activities in-person, whether indoors or outdoors:

(a) weddings; or

(b) funerals,

while adhering to the following:

(a) a maximum of 5 persons, plus the officiant; and

(b) all persons in attendance must practice physical distancing, except persons residing in the same household as set out in section 13.2(a) or additional persons as set out in section 13.2(b).

15.1 Persons may not engage in, and persons, business and organizations may not host the following events and activities in-person:

(a) social events;

- (b) arts and culture events;
- (c) sports, recreation and physical activity events;
- (d) special events;
- (e) festivals;
- (f) faith gatherings;
- (g) wedding receptions; or
- (h) funeral visitation or receptions.

but may host these events virtually while adhering to a maximum of 5 persons in one location to support the delivery of the event and complying with the physical distancing requirements set out in section 13.

15.2 Any person, business or organization that hosts an event authorized by sections 15 or 15.1 is responsible for maintaining oversight of the gathering and for ensuring that all persons in attendance comply with the requirements of this Order.

15.3 No person may engage in and no person, business or organization may host:

- (a) organized sport practice, training, games, competitions, or tournaments (recreational, amateur, and professional), or
- (b) organized arts and culture rehearsals or in-person performances.

15.4 No person, business or organization may host a formal in-person meeting or training.

15.4.1 Notwithstanding section 15.4, a business or organization may host a mental health and addictions support group meeting while adhering to the following:

- (a) a maximum of 10 persons in attendance; and
- (b) all persons in attendance must adhere to masking and physical distancing requirements of 2 metres (6 feet) set out in this Order.

15.4.2 Notwithstanding section 15.4, a business or organization may carry out meetings and training that are required for safety and essential operation.

16. For greater clarity, physical distancing and the person limit rule set out in sections 13 and 13.1 do not apply to the following organizations, activities, persons, or places:

- (a) hospitals as defined in the *Hospitals Act* and a health authority as defined in the *Health Authorities Act*;
- (b) profit, not-for-profit or government operated Department of Community Services funded organizations or representatives that are covered under the *Homes for Special Care Act* and the *Children and Family Services Act* including places of safety for children and youth, and customized placements for persons with disabilities;
- (c) profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* or home care agencies funded under the *Homemaker Services Act*;
- (d) persons providing care under the self-managed care program, supportive care program, caregiver benefit program funded by the province of Nova Scotia;
- (e) persons providing support under the Independent Living Support, Supported Apartment and Supervised Apartment Programs funded by the Department of Community Services;
- (f) homeless shelters receiving operational grants from the Department of Municipal Affairs and Housing, and those operated by religious and other voluntary organizations;
- (g) unlicensed child-care facilities;
- (h) a place designated or established under the authority of the *Correctional Services Act* or the *Youth Criminal Justice Act (Canada)* for the supervision or custody of offenders and includes community-based correctional services;
- (i) any administrative tribunal, arbitration proceeding or court operating essential services in the Province under the authority of any provincial or federal enactment, including but not limited to, a justice centre or courthouse under the authority of the *Judicature Act* or a provincial court under the authority of the *Provincial Court Act* or the *Family Court Act*;
 - (ia) notwithstanding clause (i), the Labour Board must still comply with section 13 when conducting a vote under the *Trade Union Act*.
- (j) Emergency Medical Care Incorporated;
- (k) persons providing, servicing or repairing medical equipment, such as wheelchairs, red cross beds/equipment, home oxygen equipment;
- (l) private not-for-profit community transportation providers;

(m) food production plants; and

(n) fishing vessels.

16.1 Physical distancing requirements and the person limit set out in sections 13 and 13.1 do not apply to the following municipal entities and their contractors when carrying out their work duties:

(a) Police and Fire Services;

(b) Municipal Utilities such as water, wastewater and stormwater;

(c) Maintenance of utilities and municipal facilities;

(d) Transportation;

(e) Road maintenance/repair;

(f) Municipal ICT systems and services;

(g) Public Transit;

(h) Solid Waste, garbage and litter collection and disposal;

(i) Urban Forestry; and

(j) Municipal logistic, distribution, storage, inventory and repair services.

16.2 Physical distancing requirements and the person limit rule set out in sections 13 and 13.1 do not apply to the following provincial entities and their contractors when carrying out their work duties:

(a) Transportation and Active Transit;

(b) Infrastructure and Housing;

(c) Road maintenance/repair;

(d) Government building construction and/or repair; and

(e) Enforcement or compliance officers authorized by their statutory appointments or delegated authority to inspect, investigate and/or enforce provincial legislation while carrying out their powers pursuant to the relevant statutory authority.

17. Gatherings for sleep over camps held by a recognized business or organization are cancelled for 2021 unless otherwise amended.

18. For the purpose of sections 18.2 -18.6, a "mask" means a commercial medical or non-medical mask or a home-made mask made as per the PHAC instructions located at: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/sew-no-sew-instructions-non-medical-masks-face-coverings.html>, that covers the nose and mouth.

18.1 For the purpose of section 18.2, a "public place" means the part of the following places accessible to the public,

insofar as it is enclosed:

- (a) a retail business, a shopping centre, or a building or room of a business where personal care services are provided;
- (b) a restaurant or a liquor licensed establishment, including the kitchen and preparatory space of a restaurant or a liquor licensed establishment;
- (c) a place of worship or faith gathering;
- (d) a place where activities or services of a cultural or entertainment nature are offered;
- (e) a place where sports are played, fitness, recreational or leisure activities are carried on;
- (f) a rental hall or other place used to hold events, including conventions and conferences, or to hold receptions;
- (g) a place where municipal or provincial government services are available to the public;
- (h) a common area, including an elevator, of a tourist accommodation establishment;
- (i) a lobby, reception area or elevator in an office building;
- (j) a common area or public space on a university or college campus;
- (k) a train or bus station, a ferry terminal, or an airport;
- (m) common areas of a multi-residential building;
- (n) all common areas of private indoor workplaces;

(o) private indoor workplaces where there are:

- (i) interactions with the public;
- (ii) areas with poor ventilation; or
- (iii) areas where physical distance as set out in section 13 cannot be maintained.

and insofar as it is outdoors:

- (p) all serviced areas of a restaurant or a liquor licensed establishment, including their patios but excluding holes on the golf course that are licensed; and
- (q) organized outdoors gatherings such as special or temporary events where 2 metres (6 feet) physical distancing cannot be consistently maintained.
- (r) outdoors where physical distancing cannot be maintained such as playgrounds and parks.

18.2 All persons must wear a mask that covers their nose and mouth while present in a public place.

18.3 Notwithstanding section 18.3, a person is exempt from the requirement to wear a mask in a public place if the person:

- (a) is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;
- (b) for whom the wearing of a mask is not possible because of the person's medical condition;
- (c) is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*;
- (d) is in the public place receiving care or being provided a service or while participating in a physical or other activity requiring the mask be removed, in which case the person may remove the mask for the duration of the care, service or activity;
- (e) removes the mask momentarily for identification or ceremonial purposes;
- (f) is in a courtroom, jury room or secured area in a courthouse, or room where a proceeding or meeting of an administrative tribunal established by legislation is being held; or

(g) is a performer at a virtual event or officiant in the course of performing activities requiring vocalization such as talking or singing at an event or activity as described in sections 15 or 15.1.

18.4 All persons must wear a mask that covers their nose and mouth as defined in section 18 while travelling on vehicles providing transportation to the public, including:

- (a) any municipally operated public transit, including municipally operated buses and ferries;
- (b) any public passenger vehicle licensed under the *Motor Carrier Act*, including community transit vehicles, commercial vehicles (shuttle vans), and vehicles providing charters and/or tours;
- (c) any school buses licensed under the *Motor Carrier Act* and any vehicles of any capacity operated by private schools recognized by the Minister of Education and Early Childhood Development;
- (d) commuter vehicles and courtesy vehicles as defined under the *Motor Carrier Act*, vans, mini-buses, or buses of any passenger capacity providing services to the public;
- (e) any vehicles serving residents and staff of facilities listed in section 20.1; and
- (f) taxicabs regulated by municipalities under the authority of the *Motor Vehicle Act*.

18.5 Notwithstanding section 18.4, the following persons are exempt from the requirement to wear a mask while travelling on vehicles providing transportation to the public:

- (a) a person is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;
- (b) a person for whom the wearing of a mask is not possible because of the person's medical condition; and
- (c) a person who is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*.

18.6 A person may remove the mask momentarily for identification purposes when boarding any public transit set out in section 18.4.

18.7 For greater certainty, the requirement to wear a mask, as set in section 18 and 18.4, is the minimum standard that persons and businesses must adhere to, and where

the business's plan approved in accordance with section 26.1 of this Order imposes a greater standard, then that standard applies.

19. Effective 8:00a.m. May 10, 2021:

(a) all public schools under the jurisdiction of a regional centre for education or the Conseil Scolaire Provincial are closed to students and pre-primary children and may remain open for staff to carry out work duties at the direction of the employer; and

(b) private schools are closed to students and may remain open for staff to carry out work duties at the direction of the employer.

19.1 For greater certainty, section 19(b) does not include post-secondary institutions, private career colleges or registered language schools.

19.2 Childcare facilities and family childcare homes regulated under the *Early Learning and Child Care Act*:

(a) may remain open; and

(b) directors, caregivers, staff, visitors and children over two years old must wear a mask as defined in section 18, unless subject to one of the exemptions as set out in section 18.3.

**PART III
LONG TERM CARE FACILITIES
AND
OTHER VULNERABLE POPULATIONS**

20. Effective 8:00a.m. May 10, 2021, except where otherwise stated in this Order, the restrictions on long term care facilities and other vulnerable populations apply to all persons present and residing in Nova Scotia.

20.1 Notwithstanding section 16(b) and (c) and subject to section 20.2, all for-profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* and all Adult Residential Centers and Regional Rehabilitation Centers funded and licensed by the Department of Community Services under the *Homes for Special Care Act* must comply with Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:

<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>;

20.2 All long term care facilities licenced by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act*, and all residents of such facilities must comply with the process for isolating COVID-19 positive long term care residents set out in Schedule "A", "COVID-19 Management Long Term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at: <https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.3 All long term care facilities licensed by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are closed to visitors and volunteers, except 2 designated caregivers, in accordance with the terms and conditions set out in Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at: <https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.4 All homes licensed by the Minister of Community Services for persons with disabilities under the *Homes for Special Care Act* not referred to in section 20.3 are closed to visitors.

20.5 Subject to 20.6, all residents in homes licensed by the Minister of Health and Wellness and all residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* are not permitted to have community access.

20.6 Notwithstanding section 20.5, all residents in homes licensed by the Minister of Health and Wellness and the Minister of Community Services under the *Homes for Special Care Act* may participate in drives by a designated caregiver or staff, but such outings must not include:

- (a) other passengers in the case of drives by a designated caregiver; or
- (b) stops or drive throughs.

20.7 All residents of all Adult Residential Centres and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are not permitted to have community access.

20.8 For the purpose of section 20.9, "Adult Day Program" means a planned program of activities in a professional care setting designed for older adults who require supervised care during the day, or those who are isolated and lonely. Adult day care centers enable seniors to socialize and enjoy planned activities in a group setting, while still receiving needed health services. At the same time, they offer family caregivers respite from caregiving duties while knowing that their loved one is in a safe place.

20.9 All senior's Adult Day Programs are closed, except for provision of respite care.

20.10 All Day Programs for persons with disabilities funded by the Department of Community Services are closed, except for scheduled vaccine clinics at these locations.

20.11 For greater clarity, nothing in this Order prevents the:

(a) discharge of a COVID-19 patient from a hospital to a long-term care or residential care facility;

(b) transfer of a COVID-19 patient from community to a long-term care or residential care facility; or

(c) return of a COVID-19 patient who has left a long-term care or residential care facility for healthcare services back to that facility after receiving treatment at a hospital.

PART IV BUSINESSES, ORGANIZATIONS AND PROFESSIONS

21A Effective 8:00a.m. May 10, 2021, except where otherwise stated in this Order, the restrictions on businesses, organizations and professions apply to all established businesses, organizations and professions carrying on business and operating in Nova Scotia.

21.1 The *Occupational Health and Safety Act*, 1996, c.7, s.1, is hereby incorporated by reference and must be followed by all employers, contractors, constructors, suppliers, owners and employees and each shall take every precaution that is reasonable in the circumstances to ensure the health and safety of all persons at or near a workplace.

22. All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may not carry out COVID-19 Point of Care Screening Tests (PCTs) unless the business or organization:

(a) has obtained prior approval from the Office of the Chief Medical Officer of Health; and

(b) complies with any direction issued by me, as Chief Medical Officer of Health.

23. Subject only to specific closures or limitations directed elsewhere in this Order, all not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may continue to operate but must implement physical distancing of 2 metres (6 feet) within all workplaces and meeting spaces, except where otherwise provided in this Order.

23.1 Any not-for-profit or for-profit business or organization carrying on business in Nova Scotia that cannot maintain the physical distancing requirements set out in section 13 of this Order must limit the number of customers or clients on its premises to no more than 5 persons at a time.

24. Restaurants and liquor licensed establishments are:

(a) restricted to providing food and alcohol take-out and delivery service only; and

(b) prohibited from offering in-person dining, except to serve guests of the hotel within which a restaurant or licensed establishment is located.

24.1 Restaurants offering in-person dining service under section 24(b) must:

(a) collect and maintain records of each patron contact information that includes the following minimum data:

(i) name(s);

(ii) contact telephone number;

(iii) date; and

(iv) time,

that the patron was at the restaurant or liquor licensed establishment;

(b) retain information collected under section 24.1 for a period of 30 calendar days and destroy it on the following day immediately thereafter;

(c) provide the information collected under section 24.1 to the Chief Medical Officer of Health or his delegate in electronic form; and

(d) only use the information collected under section 24.1 for the purpose of provision to the Chief Medical Officer of Health in compliance with this Order and may not use it for any other purpose.

24.2 Liquor licensed establishments and non-liquor licensed establishments, including community centres, charities or organized clubs, are prohibited from hosting patrons for activities such as darts, pool, bingo or bowling.

25. Regulated and unregulated health professions practicing may continue to practice and provide services within their scope of practice if they have a Workplace COVID-19 Prevention Plan that has been approved by the Chief Medical Officer of Health.

26. All not-for-profit, for-profit businesses, organizations and professions named in Part IV of this Order shall, as a requirement of their ongoing operations, develop and comply with a Workplace COVID-19 Prevention Plan, as amended from time to time.

26.1 In addition to the physical distancing requirements and person limit rule set out in sections 13 and 23.1, the Workplace COVID-19 Prevention Plan required by section 26 shall address the following:

- (a) how to work and interact with customers or clients;
- (b) physical distancing in the workplace;
- (c) cleaning;
- (d) equipment;
- (e) preparing employees to return to work;
- (f) preparing for customers or clients; and
- (g) monitoring and communicating of plan,

and may be substantially similar to those proposals listed in Schedule "B", located at: <https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf> for similar businesses or health professionals and must be made available for review by the Chief Medical Officer of Health.

26.2 All businesses or regulated health professionals that are a member of an association listed in Schedule "B" must adopt as their Workplace COVID-19 Prevention Plan the proposal submitted by their association and must be made available for review by the Chief Medical Officer of Health.

26.3 For greater certainty, in the case of conflict between a Workplace COVID-19 Prevention Plan and this Order, the more stringent provision applies.

27. Casino Nova Scotia (Halifax and Sydney locations) and Video Lottery Terminals are closed.

28. Subject to 28.2, all not-for-profit and for-profit fitness facilities such as gyms and yoga studios, sport and recreational facilities such as pools, arenas, tennis courts, and large multipurpose recreation facilities:

- (a) are closed to patrons,
but may open
- (b) to offer virtual classes; and

(c) to perform administrative and operational functions.

28.1 Businesses and organizations that offer indoor recreation and leisure activities such as indoor play areas, arcades, climbing facilities, dance classes and music lessons are closed.

28.2 All not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may offer outdoor fitness classes and other recreational activities up to a maximum capacity of 5 persons, or multiple groups of 5 each on their premises, while ensuring 2 metres (6 feet) physical distance between participants.

29. All personal service establishments such as hair salons, barber shops, spas, nail salons and body art establishments are closed for provision of personal services but may sell retail products in accordance with section 31.3.

30. The Art Gallery of Nova Scotia and all museums and public libraries are closed, but libraries may offer curb-side pickup and drop-off of books and other materials.

31. For the purpose of sections 31.1 and 31.2, "retail business" means a business operating on an ongoing basis at a fixed location primarily selling goods or products for use or consumption by individual purchasers.

31.1 Retail business primarily or substantially providing consumer products essential to the life, health or personal safety of individuals and animals, including:

- (a) food;
- (b) pharmaceutical products, medicine and medical devices;
- (c) personal hygiene products;
- (d) cleaning products;
- (e) baby and childcare products;
- (f) gas stations and garages;
- (g) computer and cell phone service and repair;
- (h) electronic and office supplies;
- (i) hardware supplies and home appliances;
- (j) pet and animal supplies;
- (k) gardening supplies;
- (l) workplace safety supplies; and
- (m) automobile purchases (by appointment only); and
- (n) laundromats,

may remain open but must, at all times, limit the number of customers in the store to a maximum of 25% of store capacity.

31.1.2 Effective at 8 a.m. May 8, 2021:

(a) all persons present or residing in Nova Scotia must designate one person per household to carry out purchase of products essential to the life, health or personal safety of individuals and animals; and

(b) retail businesses operating under section 31.1 to 31.2.1 must limit one person per household to enter to their business to complete purchase of products essential to the life, health or personal safety of individuals and animals,

but

(c) exceptions to (a) and (b) may be made for children and caregivers.

31.2 NSLC and their Agency Stores may remain open but must, at all times, limit the number of customers in the NSLC retail stores and their Agency Stores to a maximum of 25% of store capacity.

31.2.1 Liquor boutiques, distilleries, breweries and wineries:

(a) may remain open but must, at all times, limit the number of customers to a maximum of 25% of store capacity,

but

(b) are prohibited from offering in-person tastings, samplings or in-person dining.

31.3 All other retail businesses must restrict customer service to online, delivery, or door side or curbside pick-up and should restrict in store presence only to staff and no customers shall be permitted in such retail stores.

31.4 For greater clarity:

(a) shopping malls may remain open to facilitate the shopping as outlined in sections 31.1 to 31.3; and

(b) customers may

(i) may enter the mall to complete their shopping transaction while using contactless payment, whether for in-person shopping under section 31.1 and 31.2, or for curb-side pickup;

(ii) must go directly to the retail business to complete their shopping transaction;

(iii) may line up outside the entrance of the retail business while maintaining a physical distance of at least 2 metres (6 feet) from other

persons inside the shopping mall; and

(iv) must wear a mask as defined in section 18 while in the shopping mall to complete their purchase, unless they are entitled to any of the exceptions set out in section 18.3,

(c) no line up outside any one retail business located inside the shopping mall shall exceed 5 persons;

(d) the person responsible for the shopping mall must ensure that:

(i) music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db;

(ii) customers are not permitted to loiter in any area of the shopping mall; and

(iii) directional markings are provided to manage the flow of persons within the mall,

(e) the non-retail public areas in the mall shall be closed, other than for traffic flow/store access and washroom access; and

(f) notwithstanding clause 31.4(e), food courts are closed to the public but:

(i) food court vendors may provide services to persons who work in the mall;

(ii) tables in food courts may only be used by persons who work in the mall;

(iii) a minimum of 2 metres (6 feet) is maintained between patrons seated at food court tables and between other patrons in the food court;

(iv) patrons must wear a mask as defined in section 18 except when consuming food or beverages; and

(iv) each food court vendor may offer takeout food service.

31.5 For greater certainty, shopping malls are closed to the public for in-person shopping as set out in section 31.4 and persons are prohibited from going to a mall except to complete a purchase transaction as set out in section 31.4 or to enter their workplace located in the mall.

**PART V
EXCEPTIONS**

32. Under exceptional circumstances and under the authority granted to me as the Chief Medical Officer of Health under Part I of the *Health Protection Act*, I may exercise discretion to grant an exception to any term and condition of this Order.

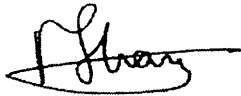
**PART VI
PENALTIES**

33. Any direction provided by a medical officer of health to a person, business, organization or other entity pertaining to COVID-19 and the terms and conditions of this Order must be followed.

34. Failure to comply with this health protection order may be considered a breach of this Order issued under the *Health Protection Act* and may result in penalties under the *Act*.

This Order remains in effect until notice is provided by myself, as Chief Medical Officer of Health, under the authority granted under Part I of the *Health Protection Act* and will be updated from time to time.

Signed:



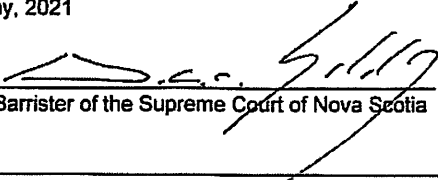
Dr. Robert Strang
Chief Medical Officer of Health
Nova Scotia Department of Health and Wellness

cc The Honourable Iain Rankin, Premier of Nova Scotia
The Honourable Zach Churchill, Minister of Health and Wellness
Laura Lee Langley, Deputy to the Premier and Clerk of Executive Council
Dr. Kevin Orrell, Deputy Minister of Health and Wellness
Dr. Shelley Deeks, Acting Deputy Chief Medical Officer of Health
Tina M. Hall, Legal Counsel, Nova Scotia Dept. of Justice

2021

Hfx No.

This is Exhibit "B" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021


A Barrister of the Supreme Court of Nova Scotia

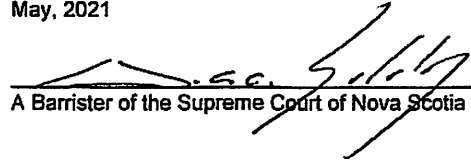
DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia



2021

Hfx No.

This is Exhibit "C" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021


A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia



BACKGROUND

Date: May 11, 2021

Prepared for: Department of Justice Legal Services, Government of Nova Scotia

Prepared by: Office of the Chief of Police, Halifax Regional Police

Subject: Rallies/public gatherings in the province – Sample correspondence & Service call totals

Contents:

1. Samples of related email correspondence received by HRP
2. Samples of related social media comments in which HRP was tagged
3. Graph delineating calls for service for COVID-19 (March 2020 to end of April 2021)

HALIFAX

Halifax Regional Police
1975 Gottingen Street
Halifax, Nova Scotia B3J 2H1

t: 902.490.5016
halifax.ca/police

1.

Email correspondence on COVID-19 gathering violations:

- The following images are samples of emails that were sent to Halifax Regional Police's general contact mailbox (contactHRP@halifax.ca) and to police, municipal and provincial government representatives. The emails reference mass gatherings and events that are in contravention of the Public Health Order.

From: [REDACTED]
Sent: Sunday, May 9, 2021 11:12 PM
To: HRP, Contact <contactHRP@halifax.ca>
Subject: [External Email] General email inquiry

[This email has been received from an external person or system]

Hello,

Can I just say I'm outraged by the previous Freedom Rally and upcoming one in Halifax on May 15th. I'm a frontline Healthcare worker, fully vaccinated, but very well could have to be redeployed to a COVID-19 unit with the way it's going here and a large gathering of people are gathering from all over. Wow. Just wow. I'm not seeing anybody, live alone, walking in my neighborhood yet these people are gathering for their freedom during a global pandemic. I spoke with a coworker today who is completely baffled as to why this is allowed too. They should all be fined. Vaccines are not 100%. So I could end up getting it and getting very ill, or a loved one who hasn't been vaccinated yet could get it indirectly from this rally due to variants being more transmissible. I hope this rally is stopped. There's also misinformation being spread on the Facebook website. Should be shut down too.

[REDACTED]

From: [REDACTED]
Sent: Saturday, May 1, 2021 7:45 PM
To: HRP, Contact <contactHRP@halifax.ca>
Subject: [External Email] General email inquiry

[This email has been received from an external person or system]

Good evening..
As I'm sure you're already aware; [REDACTED]
[REDACTED] has hosted another rally today.

She tells approximately how many people are at the gathering and none of them are wearing masks.. she refers to this event as a gathering and not a protest in this video.

[REDACTED]

Hoping you're getting lots of complaints about this so you will fine her to discourage her from having more during the time when we've had the highest cases.

From: [REDACTED]
Sent: Tuesday, April 27, 2021 3:12 PM
To: HRP, Contact <contactHRP@halifax.ca>
Subject: [External Email] Covid risk & community spread

[This email has been received from an external person or system]

Hi,
My name is [REDACTED] and I am a paramedic working in New Brunswick. I am from Nova Scotia, and all of my family and friends are there right now. There was an anti-mask rally held in Bridgewater these past few days and I find it absolutely disgusting. The leader of these rally's is bragging on social media today, that she is holding and hosting another one in Halifax on May 1st. Even after new restrictions and guidelines were put in place due to the spike in active cases. I find it appalling that the Bridgewater police did nothing about the horrendous events while this was taking place. I would surely hope that the Halifax Police do better and have higher standards. These anti maskers should be held accountable for their childish and uneducated actions, they should be treated the same way as the DAL students are being treated, and if they aren't, I assure you the public will see and be aware of that. These people should have consequences from their actions, "peaceful" protest or not, it is a huge risk and completely ignorant, selfish and irresponsible.

From: [REDACTED]
Date: Tue, May 4, 2021 at 1:42 PM
Subject: Violation of Health Protection
To: boond@halifax.ca <boond@halifax.ca>

Good day Inspector Boon,

First, I want to thank HRP for doing their very best with all the difficult situations they encountered in the past year. Certainly, COVID has affected us all and our police department.

On May 3, 2021, the RCMP published a new release that two men were charged violating the Health Protection Act for non-essential travel outside their community. Dr. Strang has been very clear that we should stay in our community, stay where we live/grocery shop etc., except for essential travel (medical, dental, work). That makes sense.

What does not make sense is that the protesters that socially gathered on Citadel Hill came from all parts of Nova Scotia, and not one protester was charged with non-essential travel outside their community/municipality.

The recent HRP statement indicated that the officers worked with the organizers for days leading up to the event. The organizers, including [REDACTED], are aware that their followers are from everywhere in this province. They had protests here in HRM, Bridgewater, Annapolis Royal for the past few months. The organizers knew that the followers were doing non-essential travel to Halifax, and to date, we have not seen any fines.

In their proactive work, did HRP request to see the protesters' driver's licence or is it that because that they can protest under the Charter, they can also go wherever they want, regardless of Health Protection Act for non-essential travel. We, the citizens of Nova Scotia also have a right to be protected by groups that may endanger our health and livelihood.

As we know, the Canadian constitution allows for restrictions on some liberties where our health and safety are at stake, and it would be for the greater public good that some individual rights might be breached. As such, the right to freedom of movement is not absolute and can be restricted when needed for the public's health. Section 7 of the Charter guarantees the life, liberty and security of the person. These rights are at risk when Nova Scotians cannot go to work and earn a living and are told to isolate or avoid going out whenever they can.

As a citizen and a veteran, I do my part every day. I cannot see my son nor my grandchild as we do not live in the same community (Cole Harbour/Wellington). As such, why were protesters allowed to travel to Halifax and get away with it? This is deeply concerning because they now know that they cannot be fined, and they are planning to go to Cape Breton on May 15, 2021 (the next worldwide protest).

Thank you for taking the time to read my email, and I hope that more can be done to protect our lives and livelihood.

Attached are screen shots (4) that friends sent me of individuals who posted where they live and/or posted that they attended the rally.

[REDACTED]

2.

Sample social media comments and messages for COVID-19 gathering violations:

The following images are sample social media comments, event listings and direct messages that reference mass gatherings and events that are in contravention of the Public Health Order.



Jack Hamilton Smythe

@HalifaxToday @HfxRegPolice @IainTRankin this has been posted on Facebook a couple of hours ago. This need to be stopped, as per Dr strang and the premier new restrictions, it's a gathering and non essential. Covid has over taken our healthcare, people are dying. STOP THIS NOW!



Jennifer K Hanrahan



SATURDAY, MAY 15, 2021 AT 1 PM UTC

World Wide Rally for Freedom - Halifax

Citadel Hill • Halifax



Janie anderssen
@Janieanderssen

replied to @HfrRegPolic and @nrc4health

I'm noticing there is another "Freedom Rally" scheduled for May 15th (the time and location keep changing but as per your last response on this issue you seem to have the inside scoop)...I trust you will make your presence known and there will be consequences this time around?

replied to @HfrRegPolic and @nrc4health



Amanda
@Amanda

replied to @HfrRegPolic and @nrc4health

As an essential worker, please don't allow this to happen. These people who protest masks and lockdowns is a slap in the face to us front line workers who have no choice but to serve these people while risking our safety each and everyday because of their selfish behaviour 🙄

replied to @HfrRegPolic and @nrc4health

1 Reply · 26 Views



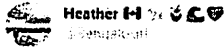
Karen Janigan
@KarenJanigan

replied to @HfrRegPolic and @nrc4health

Hoping that means an active police presence to keep 'Freedom Nova Scotia' from bullying our communities.

replied to @HfrRegPolic and @nrc4health

1 Reply · 16 Views



Replying to @pqr1_today and @HireyPolice

Needs to be shut down, or let them protest, with masks, socially distant and not gathering in groups, or fine them all.

4:17 PM · May 15, 2020 · Heather Web App

1 Reply · 8 Likes



Proud Blueser1 · 10:06 AM · May 15

That's great. Now please have this same conversation with the @HireyPolice. The protesters on Citadel Hill should have been ticketed and dispersed. No exceptions to breaking restrictions!

1 Reply · 1 Like

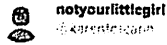


Karen Congdon · 10:06 AM · May 15

Replying to @pqr1_today, @SamFranklin and @HireyPolice

There likely would have been a riot. Those people are looking to break rules so they can complain about how their right were taken away from them. Cops would have been out numbered.

4:17 PM · May 15, 2020 · Heather Web App



notyourlittlegirl
@karentezcarin



Replying to @HtsRegPolice

As a health worker I am very disappointed by this call. I know there are things I do not understand about policing. But I know that this event and organizers are one of our biggest threats to public safety and your lack of action has emboldened these troubling artifact warriors.

May 14, 2021, 11:45 AM · Twitter for iPhone

1 reply



NS Plover
@NS_Plover



Replying to @HtsRegPolice and @nshealth

Can you explain why Freedom Nova Scotia is being permitted to have a large rally on Citadel Hill on May 15th while everyone else has gathering limits?? Why are there two sets of rules??

May 14, 2021, 12:49 PM · Twitter Web App



7:34

Freedom Nova Scotia

Home Groups Events Reviews Videos Photos

Freedom Nova Scotia

Hello all! Here is our "Going" update from last night. We really hope to see you on the 15th but whether you can make it or not, we appreciate you supporting... See More



15

SATURDAY MAY 15, 2021 AT 1 PM UTC-03 - 3 PM UTC

World Wide Rally for Freedom

★ Interested **73**

👤 Going **62**

7:37

FREEDOMNOVASCOTIA Posts Follow

freedomnovascotia



FREEDOM
TAKE THE HILL FOR TRUTH & CHOICE

MAY 15 1 PM
CITADEL HILL, HALIFAX
@freedomnovascotia

Liked by novascotiaunmasked and others
freedomnovascotia #wewillalibethere #truth #freedomnovascotia #choice #freedom

freedomnovascotia



CHOOSING YOUR COVID-19 VACCINE

7:34



SATURDAY AT 1 PM UTC-03 - 3 PM UTC-03

World Wide Rally for Freedom - Halifax

Interested Going Share More

Event by **Freedom Nova Scotia**

Citadel Hill

Saturday at 1 PM UTC-03 - 3 PM UTC-03

Price: Free Duration: 2 hr

Public - Anyone on or off Facebook

About Discussion

Details

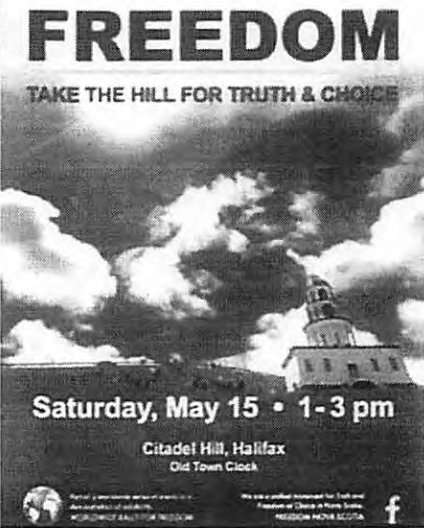
2:27

Posts

Photos

Dena Churchill

For those with ears to hear, eyes to see and hearts to make a change ... we'll see you on the hill



FREEDOM

TAKE THE HILL FOR TRUTH & CHOICE

Saturday, May 15 • 1-3 pm

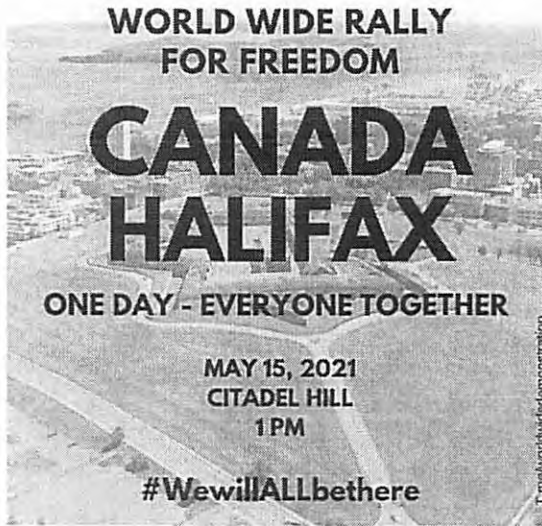
Citadel Hill, Halifax
Old Town Clock

World Wide Rally for Freedom - Halifax

We are a global movement for Truth and Freedom in Canada & Nova Scotia. FREEDOM NOVA SCOTIA

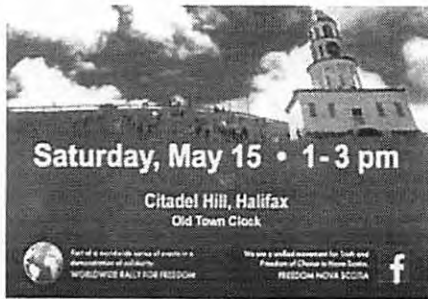


freedomnovascotia



Liked by samuraiiexe and others

freedomnovascotia #wewillallbethe
#worldwidefreedomrally #wedonotconsent



🌐 22 01

0 Comments

Will this be stopped before it begins? It is really frustrating even with one's right to free speech. Health and safety first! Law Enforcement should not be fining the general public but not a rally group. Thank you.

<https://www.facebook.com/events/167136455218068/?ref=newsfeed>



World Wide Rally for Freedom - Halifax

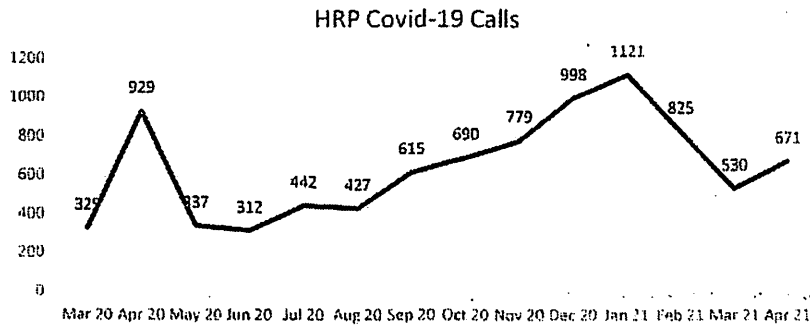
Monday, May 15, 2021
1:00 PM - 3:00 PM
Citadel Hill, Halifax, NS

is this rally still being held during current lockdown restrictions?

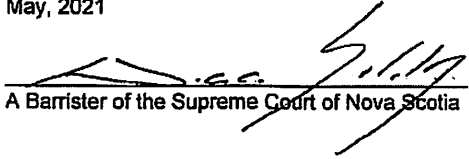
3.

Calls for service - Covid-19 data March 2020 – April 2021*

Note that these calls for service aren't simply for gathering complaints, but for all COVID-19 related calls.




*These stats are being provided for the purposes of informing this backgrounder to help inform the review and potential enhancement of current COVID-19 restrictions, and, are not to be shared publicly without the prior consent of HRP.

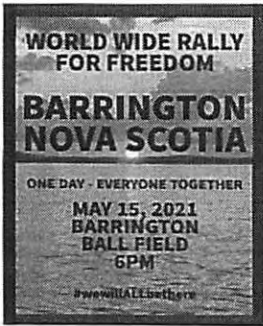
2021 Hfx No.
This is Exhibit "D" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021

A Barrister of the Supreme Court of Nova Scotia

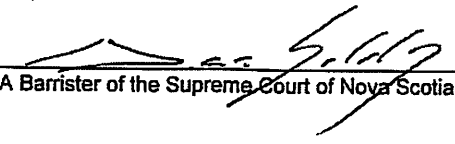
DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia



2021 Hfx No.
This is Exhibit "E" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021

A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia



2021 Hfx No.
This is Exhibit "F" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021

A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

**WORLD WIDE RALLY
FOR FREEDOM**

**CANADA
DARTMOUTH**

ONE DAY - EVERYONE TOGETHER

**MAY 15, 2021
ALDERNEY LANDING
1 PM**

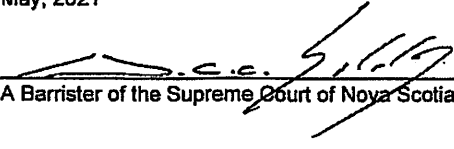
#WewillALLbethe

T: me/worlwide demonstration

2021

Hfx No.

This is Exhibit "G" referred to in the Affidavit of
Hayley Crichton sworn before me this 12th day of
May, 2021


A Barrister of the Supreme Court of Nova Scotia

DIANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

THE SHILL NOT LAB ROE
 FALL BE SHALL GO ON
 TO THE END.

This is a reproduction of a document from the National Archives and Records Administration. The original document is available at www.archives.gov.

This is Exhibit "C" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021



VIA EMAIL: jessica.boutilier@courts.ns.ca

May 12, 2021

The Honourable Justice Scott Norton
Supreme Court of Nova Scotia (HRM)
Province of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord:

**Re: Quia Timet Injunction – Anti-Mask Rally
Hearing Date May 14, 2021 at 9:30 a.m.**

Introduction

1. Please accept the following submissions on behalf of the Attorney General of Nova Scotia (hereinafter, "the Province") in support of the Province's application for a *quia timet* injunction also referred to as a pre-emptive injunction.
2. An anti-mask rally organized by the Respondents, "Freedom Nova Scotia", is scheduled to occur at Citadel Hill, in Halifax, on Saturday May 15, 2021 at 1 p.m. A Worldwide Freedom Rally is also being scheduled for Barrington, Nova Scotia on May 15, 2021 at 6pm at the Barrington baseball field.
3. Historical gatherings organized by Freedom Nova Scotia and others have failed to comply with Covid-19 Emergency Health Orders made under section 32 of the *Health Protection Act* 2004, c. 4, s. 1.¹ Consequently, the Province is seeking a *quia timet* injunction on evidence to prohibit the rally from taking place, among other relief, outlined in the draft Order. The injunction is required to prevent or reduce the community spread of COVID-19 within the Province of Nova Scotia and to ensure compliance with current Health Orders made under the *Health Protection Act*.
4. This matter is scheduled for hearing before your Lordship on May 14, 2021 at 9:30 a.m.

¹ Restated Public Health Order, updated as of May 8, 2021, see Hayley Crichton's Affidavit, Exhibit "A".

Facts

5. The relevant facts pertaining to the Province's application are set out below.
6. Worldwide Rally for Freedom and Democracy is a global movement and organizer that has been developed with the explicit objective of spreading anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric.

[Hayley Crichton, Affidavit]

7. In the Nova Scotia context, mask requirements and adherence to restrictions are set out in the Public Health Orders.

[Hayley Crichton, Affidavit]

8. The Restated Public Health Order issued under section 32 of the *Health Protection Act* 2004, c. 4, s. 1 by Dr. Robert Strang, was last updated on May 8, 2021 (hereinafter, the "Public Health Order"). A true copy of the Public Health Order is marked Exhibit "A" of Hayley Crichton's affidavit.

9. On April 23, 2021, Halifax Regional Police attended a large gathering at a private residence. 22 fines were issued as a result of this gathering as it was in contravention of the Public Health Order.

[Hayley Crichton, Affidavit]

10. On April 25, 2021, RCMP attended a residence in Wolfville, Nova Scotia, at which 30 people were gathered in contravention of the Public Health Order for a party. 4 fines were issued as a result of this gathering.

[Hayley Crichton, Affidavit]

11. On May 3, 2021, New Glasgow Police attended a private residence in Trenton, Nova Scotia. Eight people were gathered in contravention of the Public Health Order and were subsequently ticketed.

[Hayley Crichton, Affidavit]

12. Worldwide Rally for Freedom and Democracy has planned a global event entitled, "The Worldwide Demonstration May 15, 2021". The associated open Facebook event page has a total of 31,000 followers.

[Hayley Crichton, Affidavit]

13. In Nova Scotia, participation in the Worldwide Rally for Freedom and Democracy global events are organized by the local Facebook group "Freedom Nova Scotia". The Freedom Nova Scotia Facebook open group has a total of 896 followers and the related Instagram account has 100 followers.

[Hayley Crichton, Affidavit]

14. On March 20, 2021, Freedom Nova Scotia organized an open event on Facebook to rally against mask wearing and restrictions. Attendees gathered in a large group of approximately 100 people, the attendees were not wearing masks and were not maintaining six feet of physical distance, in direct contravention of the Public Health Order. The event drew media attention.

[Hayley Crichton, Affidavit]

15. A picture of the event derived from CTV News is marked Exhibit "B" of Hayley Crichton's affidavit. The picture shows a large gathering of people who can be observed to not be wearing masks, nor maintaining a distance of six feet from one another.

16. Freedom Nova Scotia has also organized rallies in the greater Halifax area on March 28, 2021 (Spring Garden Road), April 1, 2021 (Alderney Landing) and May 1, 2021 (Halifax). The rallies were in contravention of the Public Health Order.

[Hayley Crichton, Affidavit]

Anti-Mask Rally

17. Freedom Nova Scotia has scheduled an event for Saturday May 15, 2021, at 1:00pm entitled, "Worldwide Rally for Freedom – Halifax" in support of anti-mask rhetoric. The event is open and there are 261 comments on the event page, with 88 people listed as "interested" and 66 people listed as "going" as of May 12, 2021.
18. Historical public gatherings organized by Freedom Nova Scotia have not complied with the requirements of COVID-19 Emergency Health Orders issued under section 32 of the Health Protection Act, including but not limited to:

- a. masking requirements;

b. attendance limits applicable to indoor or outdoor gatherings; and

c. minimum physical distancing requirements.

[Hayley Crichton, Affidavit]

19. During the week of May 3rd, 2021, Halifax Regional Police Inspector David Boon was contacted by Freedom Nova Scotia event participant Amy Brown via telephone. Ms. Brown requested protection for the rally participants who will attend Citadel Hill to protest the COVID-19 lockdown and restrictions.

[Hayley Crichton, Affidavit]

20. Halifax Regional Police advised Ms. Brown that any such gathering would contravene the Public Health Order, and potentially the Travel Directive issued under the *Emergency Measures Act* 1990, c. 8, s. 1; 2005, c. 48, s. 1. (should people travel in from outside HRM).

[Hayley Crichton, Affidavit]

21. The Halifax Regional Police provided the Province with information pertaining to Freedom Nova Scotia, Worldwide Rally for Freedom and Democracy, inclusive of the related social media posts advertising the event scheduled for Saturday May 15, 2021, at 1:00 pm entitled, "Worldwide Rally for Freedom – Halifax".

[Hayley Crichton, Affidavit]

22. The information provided by the Halifax Regional Police to the Province references multiple rallies hosted by Freedom Nova Scotia. The information provided by the Halifax Regional Police contains photographs depicting attendees gathering without masks and in large groups in direct contravention of the Public Health Order. This is supplemented by screenshots of the open group in which commenters have requested Halifax Regional Police and Government intervention.

[Hayley Crichton, Affidavit]

23. A Worldwide Freedom Rally is also being scheduled for Barrington, Nova Scotia on May 15, 2021 at 6pm at the Barrington baseball field. A Worldwide Freedom Rally is also scheduled for Dartmouth, Nova Scotia (Alderney Landing) on May 15, 2021 at 1 pm.
24. Similar anti-mask, anti-vaccine, anti-restriction protests have taken place across Nova Scotia that have included gatherings of people who not wearing masks and were not maintaining six feet of physical distance, in direct contravention of the Public Health Order.

[Hayley Crichton, Affidavit]

25. On April 24, 2021, an event was planned at the New Brunswick and Nova Scotia border to protest COVID-19 restrictions including border closures and mask requirements by disrupting traffic on Hwy 104. The event organizer Tasha Everett posted the following to her open Facebook page, "12PM tomorrow! Be there! Its time to make more noise than ever before! Truckers have our backs and are planning to block the highways with us. United we stand, Divided we fall. A screenshot of this post is marked Exhibit "G" of Hayley Crichton's affidavit.

[Hayley Crichton, Affidavit]

26. On May 9, 2021, Kings District RCMP were called to Weston Christian Fellowship Church in Weston, Nova Scotia. 26 people were gathered at the church in contravention of the Public Health Order. 26 fines were laid against individuals and a larger fine was laid against the organizer.
27. On May 12, 2021, the Province received the following information from the Royal Canadian Mounted Police (RCMP) regarding a rally held on May 9, 2021:

PURPOSE:

To update the Attorney General of a protest, in relation to the continued border restrictions between Nova Scotia and New Brunswick that occurred on May 9, 2021.

BACKGROUND:

A group on Facebook, identified as "Support to OPEN The NS/NB Border", organized a protest for May 9, 2021 at 12:00 pm, at the NS Tourism Centre along Hwy 104, immediately as you enter Nova Scotia.

Organizers indicated that this was strictly about the border closure and the impact it is having on everyday lives.

CURRENT STATUS:

An assembly took place as scheduled on May 9, at 12:00 pm.

Approximately 20 protesters assembled along the Nova Scotia side of the Provincial border, Highway 104 Eastbound lane.

At approximately 12:30 pm, a passenger from a vehicle involved in the protest was seen throwing traffic cones into the ditch which had been positioned to block off exit 1.

The interaction between the RCMP and the vehicle passenger was met with hostility from the occupants of the vehicle.

Shortly after, a hostile crowd of 15-20 people formed around the police officer.

Protesters were recording police and expressed negative comments.

Protesters were not wearing masks or social distancing.

All attendees left by 2:30 pm.

Commentary from attendees suggests protests will be a weekly occurrence.

[Hayley Crichton, Affidavit]

28. On May 10, 2021, Dena Churchill posted an advertisement for the May 15, 2021 on her facebook page, among other anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric.

[Hayley Crichton, Affidavit]

COVID-19

29. Covid-19 is a new disease which can cause adverse health outcomes, including death in individuals with pre-existing medical conditions and in individuals over 65 years of age. People not in a high-risk group can also experience adverse health outcomes after contacting the SARS-CoV-2 virus which causes Covid-19.

[Dr. Strang, Affidavit]

30. In addition, SARS-CoV-2 is a new strain of coronavirus for which there is no underlying immunity and therefore wide spread of the virus can create a significant burden of disease and negative impacts on health systems, communities and economies.

[Dr. Strang, Affidavit]

31. There are at present no drug therapies to cure Covid-19 nor its various strains. Accordingly, the only available resources to prevent or reduce the spread of the virus, aside from vaccination, involve the use of public health requirements, including physical

distancing measures, limiting the size of gatherings and mandatory mask wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.

[Dr. Strang, Affidavit]

32. Nova Scotia public health requires that people maintain a distance of two meters from one another. This physical distance requirement is based on current knowledge regarding the virus' spreading mechanisms.

[Dr. Strang, Affidavit]

33. If left unchecked, SARS-Cov-2 can spread exponentially, for this reason, it is critical that public health requirements are followed in order to minimize the spread of the virus, reduce long-term consequences, and reduce the number of hospitalizations and deaths. It is therefore imperative to reduce the number of contacts an individual has with others to reduce the risk of spread of the virus.

[Dr. Strang, Affidavit]

34. Due to the virus' transmissibility patterns, restrictions on how people interact with others outside of their households are necessary to prevent the transmission of SARS-CoV-2 and its variants, which in turn can effectively reduce cases of Covid-19. This includes mandating the use of mask wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.

[Dr. Strang, Affidavit]

35. The current Public Health Order outlines measures directed toward preventing or reducing the transmission of Covid-19 among the population of Nova Scotia.

[Dr. Strang, Affidavit]

36. Transmission of SARS-Co V-2 can occur even when infected people are asymptomatic. SARS-CoV-2 is spread primarily from close person to person contact. The virus may be transmitted by respiratory droplets or droplet nuclei (aerosols) produced when an infected person breathes, coughs, sneezes, talks, or sings. The virus may also be transmitted by touching a surface or object contaminated with the virus and then touching the eyes, nose, or mouth.

[Dr. Strang, Affidavit]

37. Risk of SARS-CoV-2 transmission depends on many variables, such as location (indoors versus outdoors), quality of ventilation, and activity. The Public Health Order requires that people maintain a distance of two meters (six feet) from one another. This physical distance requirement is based on current knowledge of droplet spread which is the main way the virus spreads between people.

[Dr. Strang, Affidavit]

38. These requirements are designed to be implemented together as no one measure alone will prevent all SARS-CoV-2 person-to-person transmission.

[Dr. Strang, Affidavit]

39. The time from infection with SARS-CoV-2 until the development of observable symptoms is called the incubation period. The incubation period can last 14 days or very rarely longer. Unfortunately, infected people can transmit SARS-CoV-2 to others beginning about 48 hours before symptoms are present (pre-symptomatic transmission) until at least 10 days after, longer if symptoms continue past 10 days.

[Dr. Strang, Affidavit]

40. Not all people infected with SARS-CoV-2 develop symptoms but, even without symptoms, an infected person can transmit the virus to others. This is called asymptomatic transmission.

[Dr. Strang, Affidavit]

41. SARS-CoV-2 can be spread through direct or indirect (surfaces) contact with an infected person. Community spread refers to the spreading of a disease from person to person in the community. Community spread can occur when the source is known or unknown. The latter form of spread poses a serious threat to the community. The effectiveness of contact tracing is greatly reduced in cases of unknown community spread.

[Dr. Strang, Affidavit]

42. COVID-19 testing is available in Nova Scotia for both asymptomatic and symptomatic people, people in outbreak settings, and people identified as a close contact of a case. A COVID-19 test result only reflects a snapshot of a moment in time. A negative result does not necessarily mean that the person is not infected. A person infected with SARS-CoV-2 could have 13 days of negative results and a positive test on day 14.

[Dr. Strang, Affidavit]

Nova Scotia's Current COVID-19 Situation

- ***The Spread of COVID-19***

43. Since March 1, 2020, there have been a total of 4152 confirmed cases of COVID-19 and 71 deaths reported.

[Dr. Strang, Affidavit]

44. During Wave 3 (April 1, 2021 – present), there have been 2410 confirmed cases and 5 deaths have been reported. The cases reported in Wave 3 constitute 58% of the total cases reported in Nova Scotia since March 1, 2020. In addition, there have been 103 hospitalizations (non-ICU and ICU) compared to 12 during Wave 2, 54% of hospitalizations occurred in individuals <60 years of age and 13.7% of contacts became cases, compared to 7.6% in Wave 2 suggesting that the virus is more transmissible.

[Dr. Strang, Affidavit]

45. SARS-CoV-2 can spread exponentially if left unchecked. It is critical that Nova Scotians follow public health requirements and protocols to minimize the spread of the virus and its variants, reduce the long-term consequences, and reduce the number of hospitalizations and deaths.

[Dr. Strang, Affidavit]

46. Left unchecked SARS-CoV-2 virus will spread within a population resulting in an exponential growth in the number of people infected. Public health measures put in place in December 2020 brought cases down. When public health measures were eased in March 2021, cases plateaued but began to rise again in late April. Even with increased public health requirements in place, the number of recognized SARS-CoV-2 infections (COVID-19 cases) has continued to grow dramatically in the past 3 weeks.

[Dr. Strang, Affidavit]

Nova Scotia's COVID Health Care Capacity related to COVID-19

47. When this capacity is exceeded, non-COVID-19 patients will experience cancelled treatments for non-urgent conditions. The cancellation of these non-urgent, but necessary, surgeries can have health impacts, such as ongoing pain and mobility issues.

[Dr. Strang, Affidavit]

48. If Nova Scotia's COVID-19 hospitalization capacity is significantly exceeded, it could result in the need to ration acute care resources. This may mean that some patients, who are in need of critical care supports, may be unable to receive those supports.

[Dr. Strang, Affidavit]

49. In Nova Scotia, as of May 11, 2021, there were 1591 active cases of people with COVID-19, 64 people in the hospital due to COVID-19. There were 10 patients in the ICU, 54 patients in non-ICU beds due to COVID-19 and 71 people have died from COVID-19 or associated complications since the first Public Health Order was issued on March 23, 2020. This high level of hospitalization will result in continued cancellation of non-urgent surgical treatments. If the requirements for in hospital care continue to escalate, a need to triage access to care supports, especially supports in intensive care, may be required. This could require doctors and nurses to make decisions between which patients live and which die.

[Dr. Strang, Affidavit]

Nova Scotia's COVID-19 Public Health Measures

50. Nova Scotia has attempted to control the spread of the SARS-CoV-2 virus by implementing a number of public health requirements under the Public Health Order. Restrictions on how people interact with others outside of their households in public places, whether indoors or outdoors, are necessary to prevent the transmission of SARS-CoV-2 and are effective in reducing cases of COVID-19.

[Dr. Strang, Affidavit]

51. Nova Scotia's approach has been to attempt to protect Nova Scotians and control the spread of the virus through the enactment of Public Health restrictions on gathering limits, physical distancing and mandatory masking, no greater than reasonably required, considering the circumstances of the global pandemic and risk mitigation strategies required to respond to this communicable disease and its negative impact on Nova Scotians' lives. As the number of COVID-19 cases and related hospitalizations, ICU stays, and deaths have increased, public health measures have also evolved.

[Dr. Strang, Affidavit]

52. One of the health measures that Nova Scotia has employed to control the spread is to implement mandatory masking. Masks, when worn properly, are a valuable tool in

reducing the transmission of SARS-CoV-2. The use of masking can prevent an infected person from transmitting the virus to others and use of masks, especially medical masks, can help protect a healthy individual from infection in public places, whether indoor or outdoor settings. Masking, on its own, is not sufficient to control the spread of COVID-19.

[Dr. Strang, Affidavit]

53. In response to the number of COVID-19 cases with no identifiable source, Nova Scotia implemented additional public health measures, aimed at limiting the spread in high-risk settings or in settings with high-risk activities. High risk activities are activities that have more expulsions of air than ordinary activities. With increased expulsions of air, there is an increased risk of respiratory droplets or aerosols. For example, singing, shouting, and activities that result in heavy breathing are higher risk activities. These activities also may occur in higher risk settings, such as in indoor settings or settings where individuals will remain for prolonged periods of time. Reducing time spent indoors with large groups of people and reducing the time spent indoors engaging in high-risk activities can reduce the risk of the spread of COVID-19. Recent evidence also shows that even outdoors, if people are not distanced from each other or masked, transmission can happen from an infectious person to someone else.

[Dr. Strang, Affidavit]

54. The available evidence shows that widespread public masking, in addition to other public health measures, such as reducing time spent indoors with large groups of people (relative to the size of the room and the spacing of people within the room) while engaging in high-risk activities, can contribute to controlling the overall transmission of SARS-CoV-2. In addition, outdoor gatherings must also include measures such as restricted gatherings, and physical distancing and masking in order to prevent COVID-19 transmission.

[Dr. Strang, Affidavit]

55. In Dr. Robert Strang's medical opinion if the scheduled social gathering is held on or about May 15, 2021 at Citadel Hill, in Halifax, Nova Scotia then there is a substantial risk of Covid-19 transmission among the attendees.

[Dr. Strang, Affidavit]

56. It is also Dr. Strang's medical opinion that social gatherings similar to the one intended to be held by Freedom Nova Scotia on May 15, 2021 should not occur anywhere in the

Province of Nova Scotia because there is a substantial risk of Covid-19 transmission among the attendees.

[Dr. Strang, Affidavit]

Law/Argument

57. The three-part test for an interlocutory injunction is set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (S.C.C.) as follows:

- 1) that the applicant must show a serious question to be tried between the parties;
- 2) that the applicant will suffer irreparable harm if the injunction is not granted; and
- 3) that the balance of inconvenience lies in favour of the applicant.

58. The test for an interlocutory injunction has been applied many times by the Supreme Court of Nova Scotia.

59. However, the injunction being sought in the present case is a *quia timet* injunction. *Quia timet* means, "because he fears or apprehends". While injunctions are generally aimed at preventing harm into the future based on the recent conduct of a defendant, in a *quia timet* injunction the injunctive remedies are sought before any harm has actually been suffered and where the harm is only apprehended and expected to occur at a point in time in the future.²

60. The court in *BC Ltd. V. Dairy Queen Canada* summarized the law pertaining to *quia timet* injunctions as follows:

71 For sure, the law permits a *quia timet* injunction to be granted when wrongful acts have not yet occurred but are imminent or have been threatened. To obtain such an injunction, an applicant must establish not only the three elements of the *RJR McDonald* test but also that there is a high degree of probability the alleged harm will in fact occur: *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441 (S.C.C.) at para. 35; and *XY Inc. v. IND Lifetech Inc.*, 2008 BCSC 1215 (B.C. S.C. [In Chambers]) at para. 70.

61. In *Robinson v. Canada (Attorney General)*, the court expanded on the analysis of the law pertaining to *quia timet* injunctions at paras. 87 to 91:

87 All injunctions are future-looking in the sense that they all intend to prevent or avoid harm rather than compensate for injury already suffered (Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Canada Law Book, 1992) (loose-leaf updated 2018, release 23) [Sharpe] at para

² *Robinson v. Canada (Attorney General)*, 2019 FC 876, 2019 CF 876, 2019 at para 87.

1.660). One type of injunction that is frequently considered and issued by the courts is the *quia timet* ("because he or she fears") injunction, where injunctive remedies are sought before any harm has actually been suffered and where the harm is only apprehended and expected to occur at some future point. To a certain extent, and given its timing, the mandatory interlocutory injunction sought by Mr. Robinson is akin to such a *quia timet* injunction.

88 Applications for this type of injunction are not necessarily dismissed by the courts even though they often require the motion judge to assess the propriety of injunctive relief without the advantage of actual evidence regarding the nature and extent of the alleged harm. To assess prospective harm for *quia timet* injunctions, the courts have adopted a cautious approach generally requiring two elements: a high probability that the alleged harm will occur; and the presence of harm that is about to occur imminently or in the near future, thus adding a temporal dimension to the feared harm (*Merck & Co. v. Apotex Inc.*, [2000] F.C.J. No. 1033, 2000 CarswellNat 1291 (Fed. C.A.) at para 8; *Doucette v. Canada (Attorney General)*, 2018 FC 697 (F.C.) at para 23; *Gilead Sciences, Inc. v. Teva Canada Ltd.*, 2016 FC 336 (F.C.) [Gilead] at paras 5, 10; *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FC 162 (F.C.) [Amnesty] at para 70; see also Sharpe at para 1.690).

89 In the context of interlocutory injunctions, the first element (i.e., the high probability that the harm will occur) has often been expressed by the Court in terms of clear and non-speculative evidence that irreparable harm will ensue if the interlocutory relief is not granted (*Amnesty* at paras 69, 123), thus mirroring the general test for irreparable harm. On the imminence of harm, the case law developed by this Court offers no clear definition or timeline of what is "imminent", but rather suggests that it will depend on the facts of each case. For example, harm distant from as much as 18 months has been found to be imminent (*Gilead* at paras 5-6). In fact, in *Gilead*, the Court reframed the imminence criterion as a factor to be considered in determining the likelihood of future harm (*Gilead* at para 11):

[11] At the same time the requirement of imminence in the temporal sense may be relevant in the determination of the likelihood of a future event. A potential event that is more distant in time may be an event that is less likely to occur.

Furthermore, temporal imminence appears to be a subordinate consideration in a case where the likelihood of future harm appears high: see *Canadian Civil Liberties Assn v Toronto Police Service*, above, at para 88.

90 In other words, the determinative element is the likelihood of harm, not its futurity (*Horii v. R.*, [1992] 1 F.C. 142 (Fed.C.A.) at para 13). The fact that the harm sought to be avoided is in the future does not necessarily make it speculative. On this requirement to prove the imminence of harm, Justice Sharpe (writing extrajudicially) suggests that the temporal imminence of harm may not be the best way to analyze the issue, and that the courts should rather look at whether the factors relevant in the granting of

injunctive reliefs have "crystallized" (Sharpe at para 1.750). According to this approach to the imminence criterion, prematurity only arises in situations where, for example, the nature or the extent of the harm may change between the time of the decision and the moment where the harm would occur. In other words, a quia timet injunction should not be granted by the courts unless the situation that will exist when the alleged harm eventually occurs is already crystallized.

91 In light of the foregoing, I am of the view that the test applicable for apprehended harm is whether there is clear, convincing and non-speculative evidence allowing the Court to find or infer that irreparable harm will result if the relief is not granted, using the cautious approach prescribed for quia timet injunctions. Stated differently, to meet its burden in an application where the harm is apprehended and more distant, the moving party must establish, on a balance of probabilities, that there is clear, convincing and non-speculative evidence demonstrating that such harm has crystallized, so that any findings or inferences made about the harm can be found to reasonably and logically flow from the evidence.

62. In the present case, this court must assess the propriety of the injunctive relied without the advantage of actual evidence regarding the nature and extent of the alleged harm. In *Robinson* (supra), the court stated that the courts have adopted a cautious approach generally requiring two elements; *the presence of harm that is about to occur imminently or in the near future; and a high probability that the alleged harm will occur.*³

a. the presence of harm that is about to occur imminently

63. In Nova Scotia, the presence and spread of COVID-19 and its' variants among the public is irrefutable.
64. The harm alleged by the Province is the continued spread of COVID-19 within the Province if the anti-mask rally is permitted to proceed as scheduled on May 15, 2021, inclusive of other rallies and public gatherings.

b. high probability that the alleged harm will occur

65. There is a high probability that the alleged harm will occur because the correlation between social gatherings and the spread of COVID-19 can reasonably be inferred from the evidence of Dr, Robert Strang.

³ see also: *British Columbia (Legislative Assembly) v. John Doe* paras. 10 to 13; *The Water Shed Water Conditioning Limited v. MacAskill*, 2019 NSSC 183 at para. 25.

66. Based on the foregoing, the Province submits that it has met the test for a *quia timet* injunction on the evidence.

Quia Timet Injunctions and *Charter* Considerations

67. In *Ingram v. Alberta (Chief Medical Officer of Health)* 2020 ABQB 806, the applicants challenged the validity of public health orders aimed at managing the spread of COVID-19, made by Alberta's Chief Medical Officer of Health (CMOH), on grounds that they offended the *Alberta Bill of Rights* (ABR) and unjustifiably infringed rights protected by the *Canadian Charter of Rights and Freedoms*. The applicants also challenged the validity of certain sections of Alberta's *Public Health Act* on grounds they violated the ABR, *Constitution Act, 1867*, and the *Charter*.

68. In *Ingram*, the applicants argued that restrictions and mandatory mask requirements unjustifiably infringed rights protected by ss. 2 and 7 of the *Charter*.

69. On the application Ms. Ingram asserted that without the injunction staying the Business Closure Requirement, there will be no possibility for her to recover losses of revenue from the closure of her Gym and in turn, the value of her shares in that business.

70. In *Ingram*, the court found that her evidence falls short of the clear evidence required to establish irreparable harm of that nature: *1003126 Ontario Ltd. v. DiCarlo*, 2013 ONSC 278 (Ont. S.C.J.) at paras 26-27. The court went on to find at paragraph 57 of the decision that it was speculation that an interlocutory injunction will necessarily ameliorate business losses, unemployment, or financial stress. It was not enough at irreparable harm stage for the applicants to simply say that *Charter* rights were being infringed; and to ask the court to presume that if the injunction was not granted, they would suffer harm for which there was no just and reasonable remedy.

Balance of Convenience and Public Authorities

71. With respect to balance of convenience and public interest considerations the court in *Ingram* (supra) set out the following as it pertained to public authorities:

64 While it is "... open to all parties in an interlocutory *Charter* proceeding to rely upon considerations of public interest" and to "... tip the scales of convenience in [their] favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought", the Supreme Court of Canada in *RJR* also observed at paragraph 73 that:

When a private applicant alleges that the public interest is at risk that harm must be demonstrated. This is since private applicants are normally presumed to be pursuing their own interests rather than those of the public at large. In considering the balance of convenience and the public interest, it does not assist an applicant to claim that a given government authority does not represent the public interest. Rather, the applicant must convince the court of the public interest benefits which will flow from the granting of the relief sought.

65 And at paragraphs 76-78 of *RJR* the Court stated that:

... In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought. To do so would in effect require judicial inquiry into whether the government is governing well, since it implies the possibility that the government action does not have the effect of promoting the public interest and that the restraint of the action would therefore not harm the public interest. The Charter does not give the courts a licence to evaluate the effectiveness of government action, but only to restrain it where it encroaches upon fundamental rights. [emphasis added]

.....

81 I am bound by Supreme Court of Canada authority to assume that the Restrictions serve the public good; here, that they protect public health. I also have evidence from Dr. Hinshaw explaining how, left unchecked, the virus is anticipated to spread, threatening people's lives and the capacity of the health care system to provide patient care for Albertans who need it, whether as a result of COVID-19 or otherwise.

82 The Applicants ask me to find that there will be no harm because the Respondents have not provided an adequate scientific basis to establish that the Restrictions work.

83 Not only is this inconsistent with their acknowledgment that it is in the public interest to address the transmission of COVID-19, it is not the law that guides the Court on an interlocutory application for injunctive relief.

84 Again, and precisely because these applications are brought on short notice and before the Court has a complete evidentiary record and can undertake the complex *Charter* analysis required, I must assume the Restrictions protect public health. Moreover, Dr. Hinshaw's affidavit sets out

the data that leads to her concern for the health and safety of all Albertans if the Restrictions are stayed.

85 Given the risks associated with the spread of the virus that the Respondents are seeking to manage, I am of the view that there is a greater public interest in maintaining the integrity of Order 42 than there is in staying the parts of it that the Applicants ask me to suspend so that they, and other citizens of this Province, are able to gather and celebrate the holidays and to otherwise exercise their religious freedoms.

72. In order to grant a *quia timet* injunction, the Province submits that the court must find the following:

1. The harm that is anticipated is imminent.
2. The harm is irreparable.
3. Damages would not be an adequate remedy.

73. Having regard to the affidavit of Dr. Robert Strang, the harm that is anticipated (continued spread of COVID-19) if the anti- mask rally is permitted is imminent.

74. In the present case, damages are not an adequate remedy because the harm associated with contracting COVID-19 is death. There are also serious medical and health complications that occur in individuals who contract the virus. The associated impact on public health care systems, communities, and economies is immeasurable.

75. In the context of interlocutory injunctions, the balance of convenience analysis requires the court to consider which of the parties would suffer greater harm if the injunction was not granted: *Laurent v. Fort McKay First Nation*, 2008 ABQB 84 (Alta. Q.B.) at para 10.

76. The Province submits that the balance of convenience does not favour permitting the anti-mask rally to proceed on May 15, 2021. The balance of convenience also does not favour permitting similar events to be held within the Province at any point in the future.

77. There is a greater public interest in maintaining integrity of the current Public Health Order and the restrictions set out within that Order than permitting the rally to be carried out as planned.

Conclusion

78. The purpose of this injunction is to:

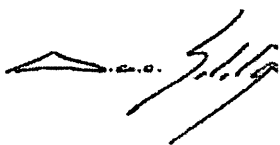
- prevent further transmission of Covid-19;
- ensure the continued functioning of the health-care system; and

- limit the amount of future deaths due to the virus.

Relief Sought

79. The Province requests that the Application and Order for injunctive relief be granted by this Honourable Court without costs.

Yours very truly,

A handwritten signature in black ink, appearing to read 'D. A. Eddy', with a stylized flourish at the end.

Duane A. Eddy

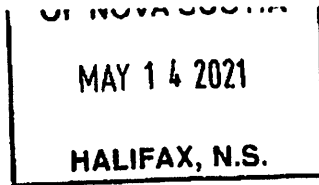
DAE/sgb

cc: Client

This is Exhibit "D" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal line. The signature is stylized and appears to be a name, possibly "Cara Zwibel".

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

and

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

Respondents

INJUNCTION ORDER

BEFORE THE HONOURABLE JUSTICE SCOTT NORTON IN CHAMBERS:

WHEREAS a Notice of Application in Chambers (*ex parte*) for a *quia timet* injunction was filed by the Attorney General of Nova Scotia on May 12, 2021, pursuant to the *Health Protection Act* 2004, c. 4, s. 1;

AND WHEREAS a hearing was held in respect of that application on May 14, 2021, with Duane Eddy representing the Attorney General of Nova Scotia;

AND UPON reviewing the materials filed herein;

AND UPON reviewing the affidavit of Dr. Robert Strang, Chief Medical Officer of Health, and the affidavit of Hayley Crichton;

AND UPON hearing submissions of counsel for the Attorney General of Nova Scotia;

IT IS ORDERED THAT:

1. The application is granted without costs to any party.
2. For the purpose of this Order an "Illegal Public Gathering" has the same meaning and definition as set out in the Public Health Order titled "Restated Order #2 of the Chief Medical Officer of Health Under Section 32 of the *Health Protection Act*, 2004, c.4, s.1" dated May 13, 2021, issued by Dr. Robert Strang.
3. The Respondent and any other person acting under their instruction or in concert with the Respondent or independently to like effect and with Notice of this Order, shall be restrained anywhere in the Province of Nova Scotia from :

a. organizing an in person gathering, including requesting, inciting, or inviting others to attend an "Illegal Public Gathering";

b. promoting an Illegal Public Gathering via social media or otherwise;

c. attending an Illegal Public Gathering of any nature whether indoors or outdoors as set out in the Public Health Orders, as amended, and issued by Dr. Robert Strang, Chief Medical Officer of Health, under section 32 of the *Health Protection Act*.

4. Any member of any Police Service, as defined in the *Police Act* 2004, c. 31, s. 1, or any peace officer as defined in the *Criminal Code*, RSC 1985, c C-46 (collectively, "Law Enforcement"), is authorized to use reasonable force in arresting and removing any person who has notice of this Order and whom Law Enforcement has reasonable and probable grounds to believe is contravening this Order. Upon arresting any person pursuant to this Order, Law Enforcement may detain such person until they may be dealt with in accordance with this Order.

5. Any member of Law Enforcement who arrests, detains, or removes any person pursuant to this Order (hereinafter, the "Offending Party"), is authorized to:

a. bring the Offending Party, as soon as possible, before a Justice of the Supreme Court of Nova Scotia, and the Offending Party will be required to show any reason why there should be no finding of Civil Contempt at a hearing before a Justice of the Supreme Court of Nova Scotia;

b. issue a summons that requires the Offending Party to appear before a Justice of the Supreme Court of Nova Scotia, as soon as possible, and the Offending Party will be required to show any reason why there should be no finding of Civil Contempt at a hearing before a Justice of the Supreme Court of Nova Scotia; or

c. release the Offending Party from arrest upon that person agreeing in writing to undertake to both:

i. appear in person before a Justice of the Supreme Court of Nova Scotia at such time and place as may be fixed for the purpose of being proceeded against for contempt of court, or for fixing a date for such a proceeding; and

ii. obey the Public Health Order issued by the Chief Medical Officer of Health, dated May 13, 2021, as amended.

d. detain such person in custody until such time as it is possible to bring that person before this Court.

6. Service of the Order shall be made upon the individual named Respondents via posting copies of the Order to their respective email addresses and on-line social media accounts. In addition, a copy of this Order shall be posted as is possible on all social media platforms associated with the Respondent Freedom Nova Scotia and Worldwide Rally for Freedom and Democracy. A person shall be deemed to have Notice of this Order upon the Order being published on the Government of Nova Scotia's COVID-19 internet website: <https://novascotia.ca/coronavirus/>, the Order is published in a public forum by the Government of Nova Scotia, or if it is read to them.

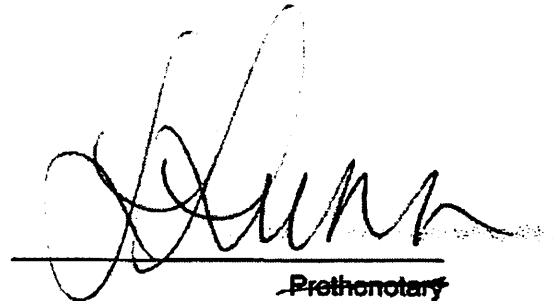
7. The provisions of this Order are additional to and do not limit, exclude, or derogate from:

- a. any powers of Law Enforcement, including but not limited to their powers under the *Criminal Code* and/or applicable provincial legislation; and
- b. any powers under the *Health Protection Act* and Public Health Orders issued under the *Health Protection Act*.

8. This Order shall remain in force until varied or discharged by a further Order of the Court.

9. The Respondents and 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 process provided in the *Civil Procedure Rules* but no such motion shall in any way excuse that person from compliance with the terms of this Order.

Issued at Halifax, Nova Scotia on May 14, 2021.

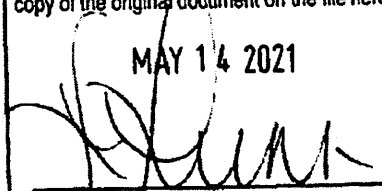


Prothonotary

LORRAINE LUNN
Deputy Prothonotary

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the seal of the court, is a true
copy of the original document on the file herein.

MAY 14 2021



Deputy Prothonotary

LORRAINE LUNN
Deputy Prothonotary

This is Exhibit "E" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be a name, possibly "Cara Zwibel".

May 17, 2021

Honourable Randy Delorey
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1700 Granville Street
Halifax, NS
B3J 1X5
Premier@novascotia.ca

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.

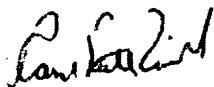
At the hearing before the court, the B.C. government conceded that the orders prohibiting outdoor protests were of no force during the relevant time and the province's Supreme Court granted a declaration that those orders violated sections 2(c) and (d) of the *Charter* and were of no force or effect. 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,



Cara Faith Zwibel
Director, Fundamental Freedoms Program

This is Exhibit "F" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the affiant.



NIJHAWAN
MCMILLAN
PETRUNIA
BARRISTERS

5162 Duke Street, Suite 200
Halifax, NS B3J 1N7

May 27, 2021

VIA COURIER

Caroline McInnes
Protonotary
The Law Courts
1815 Upper Water St.
Halifax NS B3J 1S7

Dear Ms. McInnes:

**Re: Attorney General of Nova Scotia v Freedom Nova Scotia, et al.; Hfx No. 506040
Notice of Motion**

Enclosed please find the following documents for filing in the above noted matter on behalf of The Canadian Civil Liberties Association:

1. A cheque in the amount of \$66.00;
2. Three copies of the brief;
3. One copy of the Book of Authorities;
4. Two copies of the unsworn Affidavit of Cara Zwibel; and
5. Two copies of the Notice of Motion.

The sworn copy of the Affidavit of Cara Zwibel will follow in hardcopy next week.

Please advise should you require clarification or anything further.

Yours truly,
NIJHAWAN MCMILLAN PETRUNIA

Nasha Nijhawan

This is Exhibit "G" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to be a name, possibly "A. Zwibel".

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

and

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

and

The Canadian Civil Liberties Association

Respondents

ORDER

BEFORE THE HONOURABLE JUSTICE GABRIEL IN CHAMBERS:

WHEREAS the Applicant obtained an *ex parte* order for injunctive relief against the Respondents on May 14, 2021, before the Honourable Justice Scott Norton in Chambers;

AND WHEREAS a Notice of Motion in Chambers was filed by the Canadian Civil Liberties Association ("CCLA") on May 27, 2021, for standing in the Application, among other relief;

AND UPON reviewing the materials filed herein, including the Affidavit of Cara Faith Zwibel, affirmed May 27, 2021;

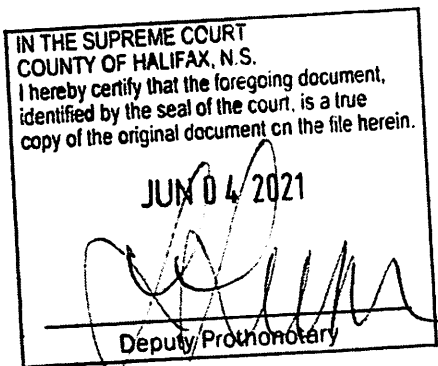
AND UPON hearing submissions of counsel for the CCLA and the Attorney General of Nova Scotia:

IT IS ORDERED THAT:

1. Service of the CCLA's Notice of Motion is deemed sufficient by the CCLA posting said notice on the website www.ccla.org.
2. The CCLA is granted public interest standing in this proceeding as a party for the purpose of a rehearing of the *ex parte* Application in Chambers; and

3. The heading will be amended to include the CCLA as a Respondent to the Application, as styled in this Order.
4. The Court provides the following direction on the rehearing of the Application
 - a. The rehearing is set for a full-day on June 30, 2021;
 - b. The Attorney General will file any supplementary affidavits on June 16, 2021;
 - c. The CCLA will file any affidavits and a brief on June 21, 2021;
 - d. The Attorney General will file a reply brief on June 25, 2021;
 - e. The parties may return to the Court for further directions, if required.

Issued at Halifax, Nova Scotia on June 4th, 2021.

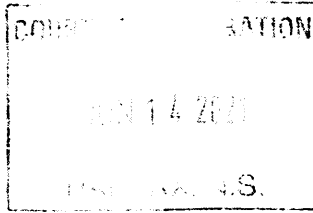


LORRAINE LUNN
Deputy Prothonotary

LORRAINE LUNN
Deputy Prothonotary

This is Exhibit "H" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the affiant.



Form 23.03

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

and

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

and

The Canadian Civil Liberties Association

Respondents

Notice of Motion

To: Respondents

Motion

The Attorney General of Nova Scotia moves for an Order discharging the Injunction Order issued on May 14, 2021 in this proceeding, pursuant to paragraph nine (9) of the Injunction Order, and an Order providing notice of this motion to the Canadian Civil Liberties Association by delivering a certified copy of the Notice of Motion to its counsel Nasha Nijhawan, and an Order providing notice to the other Respondents by posting the Notice of Motion on the Provincial Government internet website: <https://novascotia.ca/coronavirus/>.

Time and place

The motion is to be heard by judge on **June 22, 2021 at 9:30 a.m.** The moving party has set the motion for hearing in half-hour or less. The moving party says that the motion will not require more time.

References

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

1. Paragraph nine (9) of the Injunction Order issued in Hfx. No. 506040.

Evidence

The evidence in support of the motion is as follows.

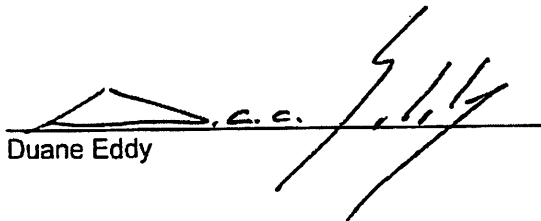
- Solicitors Affidavit of Duane Eddy

Possible order against you

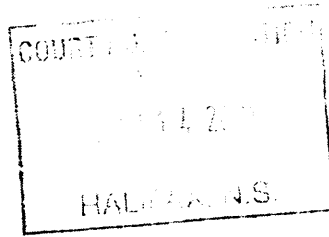
You may file an affidavit and a brief, attend the hearing of the motion, and state your position on whether the proposed order should be made. If you do not attend, the judge may grant an order without further notice to you.

Signature

Signed on June 14, 2021


Duane Eddy

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

and

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

And

The Canadian Civil Liberties Association


Respondents

Solicitor's Affidavit

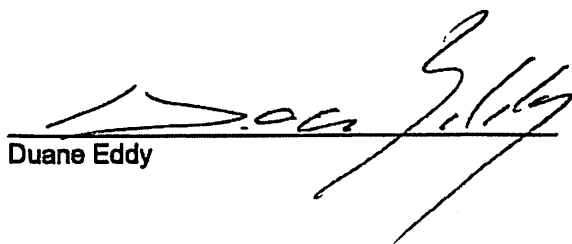
I am Duane Eddy, of the Halifax Regional Municipality, and am a Barrister and Solicitor of the Supreme Court of Nova Scotia, and make oath and say as follows:

1. I am counsel for the Attorney General of Nova Scotia and as such have personal knowledge of the matters herein deposed to, except where otherwise stated to be based on information and belief.
2. I have personal knowledge of the evidence sworn to in this Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. I am advised by the Attorney General of Nova Scotia and do verily believe that the Premier of Nova Scotia in consultation with the Chief Medical Officer of Health, Dr. Robert Strang, have determined that the Injunction Order issued by the Court in this proceeding is no longer necessary.

Sworn to at Halifax, in the Province of Nova Scotia, on this 11th day of June, 2021 before me:



A Barrister of the Supreme Court of Nova Scotia



Duane Eddy

NORMAN B. HILL
A Barrister of the Supreme Court of Nova Scotia

This is Exhibit "I" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to be a name, possibly "Cara Zwibel".

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

and

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

and

The Canadian Civil Liberties Association

Respondents

Supplemental Affidavit of Dr. Robert Strang

I make oath/affirm and give evidence as follows:

1. I am Dr. Robert Strang, Chief Public Health Officer, Department of Health and Wellness for the Province of Nova Scotia. In this role, I provide public health expertise to support health surveillance, population health, and disease control initiatives on issues of public health importance under the authority of the *Health Protection Act 2004*, c. 4, s. 1.
2. I have personal knowledge of the evidence sworn to in this Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. I received my Public Health and Preventive Medicine specialty fellowship training in 1997. I have worked as an associate Medical Officer of Health in BC (1997-1999), regional Medical

Officer of Health (1999-2006), provincial Deputy Chief Medical Officer of Health (2006-2007) and since 2007 Chief Medical Officer of Health for the Province of Nova Scotia.

5. As a part of my training and experience, I have expertise in assessing and interpreting evidence on public health matters, and my personal assessment of the facts in this affidavit based on my experience and expertise is that these facts represent the best currently available evidence related to SARS-CoV-2 and Covid-19.
6. My Restated Order under the *Health Protection Act* was updated on June 4, 2021 (hereinafter, the "Public Health Order"). A true copy of the Public Health Order is attached hereto as **Exhibit "A"**.
7. The current Public Health Order attached to this my sworn affidavit as **Exhibit "A"** outline measures directed toward preventing or reducing the transmission of Covid-19 within the population of Nova Scotia.
8. The changes to the Public Health Order from the previous Public Health Order, dated May 13, 2021, are as follows.
 - Sections 2.2: alignment of language re: "property" in NS in subsections (i) and (ii) for persons moving to NS.
 - Section 13.2: removal of requirement for persons gathering together in social groups of 10 to gather together with the same 10 consistent persons.
 - Section 15.3: deletion for lessons to be held outdoors such that persons may participate in and businesses and organizations may host lessons pertaining to organized sports, arts and culture, provided that:
 - (a) lessons are held on a one to one person ratio for instructor and participant; and
 - (b) the instructor and participant:
 - (i) wear a mask, except when singing or playing a brass or wind instrument; and
 - (ii) maintain physical distancing requirements of 2 meters (6 feet) during the lesson.
 - Section 15.3.1: authorization for one musician to perform on a patio, while wearing a mask and adhering to the Guidelines for Musicians.
 - Section 18.1: addition of "public markets" as an example of organized outdoor gathering in which persons are required to wear a mask.
 - Section 28.3: deletion of requirement for lessons to be held outdoors such that all not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may host lessons for recreational activities, provided that:
 - (a) lessons are held on a one to one person ratio for instructor and participant; and

(b) the instructor and participant:

(i) wear a mask; and

(ii) maintain physical distancing requirements of 2 meters (6 feet) during the lesson.

Nova Scotia's Current COVID-19 Situation

9. Since March 1, 2020, there have been a total of 5729 confirmed cases of COVID-19 and 89 deaths reported.
10. During Wave 3 (April 1, 2021 – present), there have been 3987 confirmed cases and 23 deaths have been reported. The cases reported in Wave 3 constitute 70% of the total cases reported in Nova Scotia since March 1, 2020. In addition, there have been 236 hospitalizations (non-ICU and ICU) compared to 12 during Wave 2, 61% of hospitalizations occurred in individuals <60 years of age and 18.2% of contacts became cases, compared to 7.6% in Wave 2 suggesting that the virus is more transmissible.
11. As I stated at paragraph six (6) in my original affidavit filed herein SARS-CoV-2 is the virus that causes COVID-19.
12. A true copy of the SARS-CoV-2 (COVID-19) statistics are attached hereto as **Exhibit "B"**.
13. As evidenced from the above and set out in **Exhibit "B"**, SARS-CoV-2 can spread exponentially if left unchecked. It is critical that Nova Scotians follow public health requirements and protocols to minimize the spread of the virus and its variants, reduce the long-term consequences, and reduce the number of hospitalizations and deaths.
14. Left unchecked SARS-CoV-2 virus will spread within a population resulting in an exponential growth in the number of people infected. Public health measures put in place in December 2020 brought cases down. When public health measures were eased in March 2021, cases plateaued but began to rise again in April and have continued into May. Even with increased public health requirements in place, the number of recognized SARS-CoV-2 infections (COVID-19 cases) grew dramatically in since April 1, 2021, as set out in **Exhibit "B"**, but has decreased exponentially with the implementation of additional public health measures commencing on April 28, 2021.

Nova Scotia's COVID Health Care Capacity related to COVID-19

15. When this capacity is exceeded, non-COVID-19 patients will experience cancelled treatments for non-urgent conditions. The cancellation of these non-urgent, but necessary, surgeries can have health impacts, such as ongoing pain and mobility issues.
16. If Nova Scotia's COVID-19 hospitalization capacity is significantly exceeded, it could result in the need to ration acute care resources. This may mean that some patients, who are in need of critical care supports, may be unable to receive those supports.
17. In Nova Scotia, as of June 11, 2021, there were 143 active cases of people with COVID-19, 10 people in the hospital due to COVID-19. There were 6 patients in the ICU, 4 patients in non-ICU beds due to COVID-19 and 89 people have died from COVID-19 or associated complications since the first Public Health Order was issued on March 23, 2020. This level of hospitalization has resulted in increased capacity due to the reduction of COVID-19 cases and

viral infection caused by the risk mitigation strategies incorporated into the public health measures set out in the Restated Order #2, dated May 13, 2021 attached to my original affidavit, as Exhibit "A", sworn on May 12, 2021.

Nova Scotia's COVID-19 Public Health Measures

18. The available evidence continues to show that widespread public masking, in addition to other public health measures, such as reducing time spent indoors with large groups of people (relative to the size of the room and the spacing of people within the room) while engaging in high risk activities, can contribute to controlling the overall transmission of SARS-CoV-2. In addition, outdoor gatherings must also include measures such as restricted gatherings, and physical distancing and masking in order to prevent COVID-19 transmission.
19. Risk of SARS-Co V-2 transmission continues to depend on many variables, such as location (indoors versus outdoors), quality of ventilation, and activity. The Public Health Order requires that people maintain a distance of two meters (six feet) from one another. This physical distance requirement is based on current knowledge of droplet spread which is the main way the virus spreads between people.
20. These requirements are designed to be implemented together as no one measure alone will prevent all SARS-CoV-2 person-to-person transmission.
21. With few exceptions individuals entering the Province are still required to self-isolate for 14 days. Enhanced testing for COVID-19 remains available to those with symptoms and without symptoms of the disease. Social distancing of six feet and mask mandates remains the rule. Public health officials continue to employ contact tracing as a means of tracking the infection in the population.
22. Community spread refers to the spreading of a disease from person to person in the community. There are two general types: 1) where the source is known; 2) where the source is not known. The latter is worrisome as it makes contact tracing more difficult and generally is an indicator of a more widespread transmission of the disease in the community. As of June 11, 2021 Nova Scotia has experienced widespread community transmission of COVID-19. 82% of cases have come from a known source.
23. The medical community has generally accepted that the incubation period for COVID-19 remains up to 14 days with the median estimate at 5-6 days between infection and the onset of clinical symptoms.
24. Evidence shows that the virus and its variants can be transmitted by those who have not yet developed symptoms (pre-symptomatic) and people who never develop symptoms (asymptomatic) and that these are significant drivers of transmission of the disease.

Phased Reopening

25. I decided to begin implementing a phased reopening of the Province consisting of five phases.
26. Nova Scotia's reopening plan takes a phased approach to safely easing restrictions. The 5-phase plan is based on ongoing progress of provincewide vaccination rates and improvements of public health and healthcare indicators like COVID-19 activity and hospitalizations.

27. The reopening plan safely eases restrictions over 5 phases as vaccination targets are reached and case numbers and hospitalizations decline. This allows Nova Scotians to safely enjoy summer with public health measures in place while we get most of our population fully vaccinated. Once that happens, we should be able to further ease restrictions and move in to a new normal of living during COVID-19.
28. The 5-phase reopening plan outlines how restrictions will ease while protecting the healthcare system and increasing vaccination rates throughout the province. COVID-19 transmission will continue to be monitored. If required, a phase may be paused to respond to trends at county or provincial levels. Additional plan details will be released to the public as each phase starts.
29. Each phase is based on COVID-19 activity, hospitalizations and vaccination rates. Phases are expected to last between 2 to 4 weeks if targets are met in each phase. Testing continues and is monitored throughout all phases.

Phase 1

30. Nova Scotia started phase 1 of the reopening plan on 2 June 2021.
31. During phase 1 Nova Scotia residents are permitted to have more social connections, including creating a consistent group of 10 for your close social bubble outdoors and participating in some activities in small groups. Businesses and services start to reopen and gradually ease restrictions. Phase 1 allows more outdoor activities to resume with smaller, well-managed groups where the risk of spreading COVID-19 is minimized. This phase also permits all retail to open at reduced capacity 25% of allowable occupancy while minimizing the risk of spread of COVID-19.

Phase 2

32. During phase 2 of Nova Scotia's reopening plan, we further expand outdoor and indoor activities and will increase capacity for businesses and services. Plan phases are based on ongoing progress of vaccination rates and improvements of public health and healthcare indicators.
33. During phase 2 outdoor and indoor activities and social gatherings will continue to expand. Phase 2 will allow more activities to resume with smaller, well-managed groups where the risk of spreading COVID-19 is minimized. The Province will also be able to increase operating capacity for businesses and services. Testing also continues and is monitored throughout this phase.

Phase 3

34. During phase 3 we can continue to expand social activities and gatherings and remove restrictions from travel. Phase 3 will allow easier travel into Nova Scotia for Atlantic Canadians and continues to expand capacity for businesses and services. Testing also continues and is monitored throughout this phase.

Phase 4

35. During phase 4 we can continue to have more social connections and access to expanded capacity for businesses, services, activities and events. Phase 4 will allow more travel into

Nova Scotia with less restrictions for Canadians travelling from outside Atlantic Canada into Nova Scotia and increased visitation with long-term care residents.

Phase 5

36. During phase 5 of Nova Scotia's reopening plan, we start to move into living with COVID-19 as the new normal. This includes easing public health measures and supporting ongoing expanded travel into Nova Scotia.
37. During phase 5 we start to move into the new normal of living with COVID-19, including easing public health measures. Phase 5 looks at federal regulations and requirements to support travel into Nova Scotia from international travelers and how public health measures will continue to keep our communities safe. COVID-19 transmission will continue to be monitored.

Currently Nova Scotia is in Phase 1

38. Phase one (1) reopening as of the date of this my sworn affidavit is continuing to proceed, with the goal of moving into Phase two (2) on June 16, 2021 if supported by the epidemiology of a continued decrease in positive COVID-19 cases and hospitalizations resulting from COVID-19 coupled with ongoing progress of provincewide vaccination rates.
39. During Phase 1 of the reopening plan the gathering restrictions are set out in the Restated Order # 2, dated June 4, 2021, attached hereto as **Exhibit "A"**, as follows:

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing in the same the household, and are not required to practice physical distancing and masking;

(b) where the number of persons living in the same household is 2 persons or less, they may gather together indoors with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing and masking; and

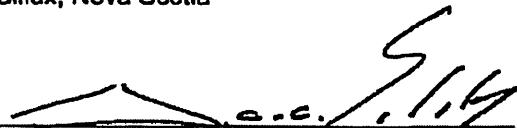
(c) persons may gather together in social groups of up to 10 persons outdoors and they are not required to practice physical distancing and masking.

40. The rules, guidelines, and restrictions set out in the Public Health Order were derived based on the available epidemiology evidence and data pertaining to Sars CoV-2 and Covid-19 activity, hospitalizations and vaccination rates within the Province.
41. The risk mitigation strategies set out in the Public Health Order continue to show positive outcomes and effects of reducing Covid-19 viral infections. As more Nova Scotian's receive Covid-19 vaccinations and Covid-19 cases continue to decline or remain at current levels within the population, Phase 2 will likely occur.

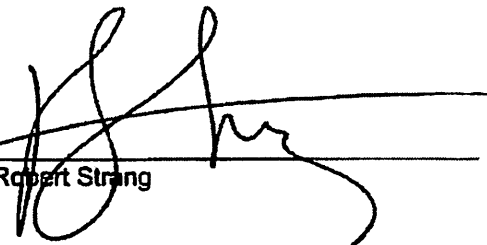
Exceptions During Phase 1

42. During Phase 1, I received a request to grant an exception to the gathering limits in accordance with Section 32 of the Public Health Order. The United Muslim Community of Canada requested approval to gather for in memory and support of the June 6th tragic deaths of the Muslim Pakistani Canadian family.
43. I granted the aforementioned exception based on my consideration of the following criteria:
- a.) Importance on the activity for which the request is being made;
 - b.) Level of risk (usually has to be a qualitative determination) of this activity, including risk mitigation strategies;
 - c.) Level of trust in requester in terms of information provided and adherence to any required protocols;
 - d.) Availability of other options to achieve the desired outcome; and
 - e.) Precedents – prior exceptions and/or implications of this one
44. Notwithstanding the granting of the foregoing exception, it is my medical opinion that if gathering limits and public health measures are not complied with then that increases the risk of Covid-19 transmission and infection within the population.
45. It is also my medical opinion that illegal public gatherings or the activities that incite illegal gatherings to occur should be prohibited in the Province of Nova Scotia because illegal public gatherings creates a substantial risk of Covid-19 transmission and viral infections occurring within the Province.

Sworn to before me on June 15th, 2021 at
Halifax, Nova Scotia


Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

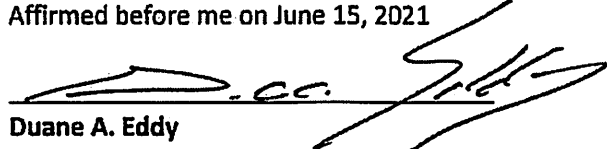
DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia


Dr. Robert Strang

2021

Hfx No. 506040

This is Exhibit "A" referred to
In the Affidavit of Dr. Robert Strang
Affirmed before me on June 15, 2021



Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

**RESTATED ORDER #2 OF THE CHIEF MEDICAL OFFICER OF HEALTH UNDER
SECTION 32 of the *HEALTH PROTECTION ACT* 2004, c. 4, s. 1.**

June 4, 2021

Update Log:

June 4, 2021: Sections 2.2, 13.2, 15.3, 15.3.1, 18.1 and 28.3 (amended)

May 31, 2021; Sections 2, 2.2-2.3, 3.2, 13A, 13.2-13.5, 14, 15-15.3, 15.4.2, 18, 19-19.1, 20, 20.3-20.7, 21A, 23.1, 24.1-24.5, 26.4-26.5, 28, 28.2, 29, 31-31.2 (amended) and Sections 15.3.1-15.3.2 (new)

May 21, 2021: Sections 2-2.3, 10-10.1, 12.1, 12.3, 13A, 18.3, 18.7, 19, 20, 21A and 31-31.2.1 (amended) and Sections 15.3.1., 26.4-26.5 and 28.3 (new)

May 13, 2021: Sections 2-2.3, 3.2, 7-7.1, 13A, 13.2, 20 and 21A (amended) and Sections 13.5-13.6 (new)

May 8, 2021: Sections 2-2.3, 3.1-3.2, 4-4.2, 10, 11, 12.1, 12.3-12.4, 13A, 19-19.2, 20, 21A, 22 and 31.1 (amened), and Sections 13.4 and 31.1.2 (new)

May 4, 3021: Sections 2.2, 28.2 and 31.1 (amended) and Section 13.3 (new)

April 29, 2021: Sections 24.3 and 31.2 (amended) and Section 31.2.1 (new)

- TO:**
- 1.) All persons residing in or present in the Province of Nova Scotia;**
 - 2.) All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia;**
 - 3.) Such other persons or entities as may be identified by the Chief Medical Officer of Health or otherwise as set out in this Order.**

ORDER made pursuant to Section 32 of the *Health Protection Act* (Nova Scotia)

WHEREAS Section 32 of the *Health Protection Act* states:

32 (1) Where a medical officer is of the opinion, upon reasonable and probable grounds, that:

- (a) a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary in order to decrease or eliminate the risk to the public health presented by the communicable disease,

the medical officer may by written order require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

WHEREAS COVID-19 has been identified as a communicable disease that presents a risk to public health as defined under s.4(b) of the *Health Protection Act*, and;

WHEREAS I am the Chief Medical Officer of Health for the Province of Nova Scotia and am of the opinion, upon reasonable and probable grounds, that

- (a) a communicable disease (COVID-19) exists; and that there is an immediate risk of an outbreak of the communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary to decrease or eliminate the risk to the public health presented by the communicable disease, and;

WHEREAS as the Chief Medical Officer of Health, I have determined it necessary to issue this Order to the Class of Persons to decrease the risk to public health presented by COVID-19.

Please be advised that:

I, Dr. Robert Strang, Chief Medical Officer of Health, order the following:

**PART I
ENTRY, ISOLATION AND QUARANTINE REQUIREMENTS**

1. In this Order,

- (a) “self-isolate” means the requirement of any person who has COVID-19 to remain separate from others in such places and under such conditions to prevent or limit the direct or indirect transmission of COVID-19; and
- (b) “self-quarantine” means the requirement of any person who has been exposed or may have been exposed to COVID-19 during its period of communicability to restrict that person’s activities in order to prevent disease transmission during the incubation period for this disease.

2. Effective 8:00a.m. June 2, 2021, all persons are prohibited from entering Nova Scotia, except as stated herein or set out elsewhere in this Order:

(a) permanent residents of Nova Scotia and their spouses, partners and dependant children when travelling together;

(b) persons who have engaged in essential travel outside Nova Scotia; or

(c) spouses, partners and dependant children of the following persons engaged in essential travel, when travelling together with that person:

(i) students coming to study in Nova Scotia;

(ii) essential health care workers;

(iii) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service; and

(iv) a person who has been granted an exception in accordance with section 32.

2.1 Where any person travels into Nova Scotia in contravention of this Order, a peace officer is hereby authorized and directed to return that person to an interprovincial border and require the person to leave the Province immediately or at such a time as may be directed, and in doing so, may exercise authority under section 46 of the *Health Protection Act*.

2.2 For the purpose of section 2(b), persons engaged in essential travel means:

(a) a resident of Nova Scotia whose primary employment is in another province;

(b) a person required to participate in-person in a legal proceeding in another province;

(c) students who are:

(i) international students registered for online or in-person study at a Nova Scotia designated learning institution;

(ii) domestic (Canadian) students who are registered for online or in-person study in the Spring/Summer 2021 semester at a Nova Scotia designated learning institution; or

(iii) returning to their primary or family residence in Nova Scotia after studying outside Nova Scotia;

(d) a party to a child sharing arrangement that requires entry into or exit from Nova Scotia;

(e) a temporary foreign worker as set out in sections 7 to 7.1, a rotational worker as set out in sections 9 to 9.1, a specialized worker as set out in sections 10 and 10.1, and a fish harvester as set out in section 11;

(f) essential health care workers;

(g) a person exempt from self-quarantine following the COVID-19 Protocol for Exempt Travelers;

(h) a person traveling between Nova Scotia and New Brunswick, or Nova Scotia and Prince Edward Island for work, school and childcare only, while following the Nova Scotia-New Brunswick-Prince Edward Island protocol;

(i) a person required to travel to Nova Scotia for essential health services, with accompanying support persons;

(j) a person and their immediate family members living in the same household who are moving to Nova Scotia and have:

(i) an unconditional Agreement of Purchase and Sale to purchase property in Nova Scotia that was executed on or before May 1, 2021; or

(ii) a 1-year Lease Agreement for residential premises in Nova Scotia that was executed on or before May 1, 2021; or

(iii) ownership of property in Nova Scotia and either an Agreement of Purchase and Sale of their home or notice of termination of their Lease Agreement in another province or territory; or

(iv) an accepted Letter of Offer of Employment that is dated on or before May 7, 2021,

and a self-quarantine plan on entry into Nova Scotia that is subject to approval of the Chief Medical Officer of Health or his delegate; or

(k) a person who has been granted an exception in accordance with section 32.

2.3 Effective 8:00a.m. June 2, 2021, all persons seeking entry into Nova Scotia must apply through the Nova Scotia Safe Check-in form and complete daily digital check-ins, located at: <https://travel-declaration.novascotia.ca/en>, except:

(a) persons following the Nova Scotia-New Brunswick-Prince Edward Island protocol;

(b) professional truck drivers;

(c) persons who have received compassionate exceptions; and

(d) essential healthcare workers who travel to and from Nova Scotia and another province or territory to carry out their work duties on an ongoing regular basis or on a locum basis.

3.1 The requirements of section 3.2 apply to all persons residing in or present in the Province of Nova Scotia who:

(a) have travelled outside Nova Scotia or reside in the same household of a person who has travelled outside Nova Scotia; or

(b) are identified as a close contact of a person who has or has been diagnosed with COVID-19; or

(c) are identified as a person diagnosed with COVID-19; or

(d) have been tested for COVID-19 due to the presence of symptoms or as directed by public health and are awaiting the results of their test.

3.2 Effective 8:00a.m. June 2, 2021, those persons listed in section 3.1 must:

(a) self-quarantine or self-isolate, for:

(i) the period commencing on the day of entry into Nova Scotia, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health, or

(ii) the first day of close contact, or first day of symptoms, testing, diagnosis, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health.

(b) During the 14-day period, conduct themselves in such a manner as not to in any way expose any other person to infection or potential infection from COVID-19, and follow all infection control instructions given to them on the Government of Nova Scotia's website, at: <https://novascotia.ca/coronavirus/>, or given to them by Telehealth 811 staff, public health staff or any other staff of a healthcare facility to which they may seek or receive treatment.

(c) After the 14-day period in section 3.2(a.) has lapsed, they may cease self-isolation or self-quarantine if they do not exhibit symptoms of COVID-19.

3.3 All persons are encouraged to complete the online assessment tool should they exhibit symptoms of COVID-19.

(c) persons who have received compassionate exceptions; and

(d) essential healthcare workers who travel to and from Nova Scotia and another province or territory to carry out their work duties on an ongoing regular basis or on a locum basis.

3.1 The requirements of section 3.2 apply to all persons residing in or present in the Province of Nova Scotia who:

(a) have travelled outside Nova Scotia or reside in the same household of a person who has travelled outside Nova Scotia; or

(b) are identified as a close contact of a person who has or has been diagnosed with COVID-19; or

(c) are identified as a person diagnosed with COVID-19; or

(d) have been tested for COVID-19 due to the presence of symptoms or as directed by public health and are awaiting the results of their test.

3.2 Effective 8:00a.m. June 2, 2021, those persons listed in section 3.1 must:

(a) self-quarantine or self-isolate, for:

(i) the period commencing on the day of entry into Nova Scotia, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health, or

(ii) the first day of close contact, or first day of symptoms, testing, diagnosis, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health.

(b) During the 14-day period, conduct themselves in such a manner as not to in any way expose any other person to infection or potential infection from COVID-19, and follow all infection control instructions given to them on the Government of Nova Scotia's website, at: <https://novascotia.ca/coronavirus/>, or given to them by Telehealth 811 staff, public health staff or any other staff of a healthcare facility to which they may seek or receive treatment.

(c) After the 14-day period in section 3.2(a.) has lapsed, they may cease self-isolation or self-quarantine if they do not exhibit symptoms of COVID-19.

3.3 All persons are encouraged to complete the online assessment tool should they exhibit symptoms of COVID-19.

3.4 For greater certainty, persons required to self-isolate or self-quarantine in accordance with section 3.2 must remain in their residence or residence grounds and otherwise remove themselves from the presence of others in public while they may be infectious during the 14-day period, so that all precautions necessary to protect others are in place. Specifically, such persons must not enter any buildings, public transportation, or other enclosed spaces (other than their residence) where other people are present.

3.5 Notwithstanding section 3.2(a):

(a) persons who receive a negative COVID-19 test result after being referred for testing by the online assessment tool due to the presence of COVID-like symptoms may cease self-quarantine on the date of receipt of the negative test result.

(b) persons who are required to self-isolate or self-quarantine may leave their residence:

**(i) to undergo COVID-19 testing as directed by a Medical Officer of Health;
or**

(ii) for 1 outing per day for outdoor exercise within walking/running distance of their home or isolation site for a maximum of 1 hour.

4. Notwithstanding section 3.1(a), persons who reside in the same household as a person who has travelled into Nova Scotia or is returning to Nova Scotia from any geographic location outside Nova Scotia for essential travel, are not required to self-quarantine if the traveller, during their 14-day period of self-quarantine, meets all of the following criteria:

4.1 For essential travel set out in subsections 2.2, the traveller:

(a) stays at their place of residence;

(b) has their own separate room in the home (e.g. separate bedroom, basement or attic);

(c) sanitizes their hands before leaving the separate room;

(d) wears a non-medical mask when outside of their separate room;

(e) avoids being in the same space as other household members;

(f) has their own bathroom or if sharing a bathroom then cleans high touch surfaces (e.g. doorknob, tap, toilet handle, sink, etc.) after each use;

(g) has food and beverages prepared by others and accesses them in a non-contact manner;

(h) does not share dishes, drinking glasses, cups, eating utensils, towels, bedding or other items with others in the home;

(i) keeps their personal items (e.g. toothbrush, cups, cell phones, tablets, laptops, etc.) separate from those belonging to others; and

(j) does not share food, drinks or cigarettes or any other items that are put in the mouth.

4.2 For greater clarity, a person who travels to Nova Scotia from any geographic location outside Nova Scotia for non-essential travel must self-quarantine in accordance with section 3.2.

5. Notwithstanding sections 2 and 3.1, persons who are well and showing no symptoms of COVID-19 may enter Nova Scotia for the purposes of facilitating child sharing between parents under an order or agreement providing for joint custody, and in such instances, both the persons facilitating custody and children showing no symptoms of COVID-19 are exempt from the requirement to self-quarantine.

5.1 Further to section 5, parents and children entering or leaving Nova Scotia for the purposes of facilitating child sharing arrangements must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>.

6. Notwithstanding sections 2 and 3.1, individuals who are well and showing no symptoms of COVID-19 and are engaged in a legal proceeding in Nova Scotia, whether the accused, victim, witness, party or lawyer in such proceeding, may enter Nova Scotia for participation in the legal proceeding and are exempt from self-quarantine if the person adheres to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

7. An employer or contractor of any Temporary Foreign Worker entitled to enter Nova Scotia pursuant to the Federal Order in Council 2021-0077, as amended, must first, before the Temporary Foreign Worker enters Nova Scotia, satisfy me, as Chief Medical Officer of Health, that the employer or contractor has made adequate provision for compliance with:

(a) the federal quarantine rules applicable to the Temporary Foreign Workers in the Agriculture and Seafood Sector; and

(b) the self-quarantine requirements set out in section 3.2 of this Order.

7.1 In addition, the employer or contractor and the Temporary Foreign Worker must, for the duration of the entire work period in Nova Scotia:

(a) adhere to all applicable terms and conditions of this Order; and

(b) adhere to the COVID-19 Protocol for Temporary Foreign Workers employed in

Agriculture and Seafood Sectors established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocolfortemporaryforeignworkers-agriculture-and-seafood-sectors-en.pdf>.

(c) comply with any direction issued by me, as Chief Medical Officer of Health, or a Medical Officer of Health with respect to the Temporary Foreign Worker and their employment in Nova Scotia.

8. Notwithstanding sections 2 and 3.1, persons who are required to travel to Nova Scotia or outside Nova Scotia for essential health services, with accompanying support persons as permitted by health authority policy, are exempt from the requirement to self-quarantine but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

9. For the purpose of section 9.1, “rotational worker” means a person who lives in Nova Scotia and travels to work in another province or territory in Canada on a regular schedule or travels outside Canada on a regular schedule and is exempt from self-quarantine under the federal *Quarantine Act*.

9.1 Notwithstanding sections 2 and 3.1, rotational workers must adhere to the self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Rotational-Workers.pdf>.

10. Notwithstanding sections 2 and 3.1, specialized workers who are:

(a) needed for urgent work on critical infrastructure that cannot be done by individuals from within the Province and such work is crucial to the functioning of the Province; or

(b) needed for urgent work that cannot be done by individuals from within the Province and are necessary to preserve the viability of one or more Nova Scotia businesses,

are permitted to enter Nova Scotia from any geographic location outside Nova Scotia. A list of critical infrastructure included in this definition is available at: <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/crtcl-nfrstrctr/esf-sfe-en.aspx>.

10.1 Specialized workers permitted to enter Nova Scotia in accordance with section 10 must adhere to self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Specialized-Workers.pdf>.

11. Notwithstanding sections 2 and 3.1, fish harvesters required to enter Nova Scotia from any geographic location outside Nova Scotia to perform the commercial or

licensed activity of catching fish and other seafood for market or other approved activities, excluding recreational fishing, must adhere to self-quarantine requirements established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-fish-harvesters-en.pdf>.

12.1 Notwithstanding section 3.1, workers who are essential to the movement of people and goods, and who must enter Nova Scotia as part of their duty requirements, are exempt from the requirement to self-quarantine, particularly:

(a) healthy workers in the trade and transportation sector who are employed in the movement of goods and people across the Nova Scotia border by land, air, or water, including truck drivers, crew, maintenance and operational workers on any plane, train or ship;

(b) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service;

(c) first responders, including police, fire, EHS paramedic workers; and

(d) essential healthcare workers who travel to and from Nova Scotia and another province or territory to carry out their work duties on an ongoing regular basis or on a locum basis.

but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

12.2 For greater clarity, airline crew employed in the movement of people and goods and who are required to travel to Nova Scotia or from Nova Scotia to carry out their work duties are exempt from the self-quarantine requirements set out in section 3.2.

12.3 Notwithstanding section 3.1, persons who reside in Nova Scotia, New Brunswick or Prince Edward Island and are required to travel between Nova Scotia and New Brunswick or between Nova Scotia and Prince Edward Island on a regular ongoing basis to work, attend a school or post-secondary institution, access child care, or access or provide essential veterinary services located in one of these three provinces are exempt from the requirement to self-quarantine if that person follows the travel protocol at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-NS-NB-PEI-travel.pdf>.

12.4 Persons exempt under sections 12.1 to 12.3 must practice physical distancing of 2 metres (6 feet) to the best of their ability, follow all public health recommendations, closely self-monitor and must self-isolate or self-quarantine should they exhibit any COVID-19 symptoms as set out in the online assessment tool.

**PART II
PHYSICAL DISTANCING,
GATHERING LIMITS,
MASKS AND FACE COVERINGS**

13A Effective 8:00a.m. June 2, 2021, except where otherwise stated in this Order the requirements for physical distancing, gathering limits, masks and face coverings apply to all persons present and residing in Nova Scotia.

13. All persons present and residing in Nova Scotia must maintain physical distancing of 2 metres (6 feet).

13.1 All persons present and residing in Nova Scotia must not participate in any gatherings, whether indoors or outdoors, unless subject to a specific exception set out in this Order.

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing in the same the household, and are not required to practice physical distancing and masking;

(b) where the number of persons living in the same household is 2 persons or less, they may gather together indoors with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing and masking; and

(c) persons may gather together in social groups of up to 10 persons outdoors, and they are not required to practice physical distancing and masking.

13.3 Notwithstanding sections 13.1 and 13.2 and for greater certainty, parties to a child sharing arrangement, or an order or agreement providing for joint custody:

(a) may facilitate and participate in such child sharing or custody arrangement between households,

but

(b) must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>
if a parent or child develops symptoms or tests positive for COVID-19.

13.4 For the purpose of section 13.5, an “illegal public gathering” is defined as a gathering that does not comply with the requirements of this Order, including:

- (a) the attendance limits applicable to gatherings, whether indoors or outdoors;
- (b) physical distancing requirements; and
- (c) masking requirements.

13.5 For greater certainty, persons are prohibited from:

- (a) organizing an in-person gathering, including requesting, inciting, or inviting others to attend an illegal public gathering;
- (b) promoting an illegal public gathering via social media or otherwise; or
- (c) attending an illegal public gathering of any nature, whether indoors or outdoors.

14. Notwithstanding section 13.1, persons may engage in outdoor physical activity while adhering to the gathering limitations set out in section 13.2 or the gathering limitations while participating in an outdoor fitness class and other recreational or leisure activities as set out in sections 28, 28.2 and 28.3, and in doing so, must adhere to physical distancing requirements of 2 metres (6 feet) as set out in section 13.

15. Persons may engage in, and business and organizations may host the following events and activities in-person:

- (a) weddings;
- (b) funerals;
- (c) faith gatherings;
- (d) drive-in or parking lot faith service; and
- (e) drive-in movie theatre,

while adhering to the following:

- (a) a maximum of 5 persons plus the officiant if the wedding or funeral is held indoors, or a maximum of 10 persons plus the officiant if the wedding or funeral held outdoors;
- (b) a maximum of 10 persons plus the officiant for outdoor faith gatherings;

(c) all persons in attendance at events (a) to (c) must practice physical distancing, except persons residing in the same household as set out in section 13.2(a) or additional persons as set out in sections 13.2(b) and (c); and

(d) all persons in attendance at a drive-in or parking lot faith service, or drive-in movie theatre must adhere to the following conditions:

(i) the service or movie is conducted over speakers or by remote radio broadcast;

(ii) there is no contact between cars and no transfer of things between cars;

(iii) participants remain in their respective vehicle while “attending” the service, unless accessing a washroom facility or concession stand and while doing so, must adhering to protocol for gathering limits, physical distancing, and masking requirements set out in this Order;

(iv) participants practice physical distancing among vehicles, such that vehicles must be at least 2 metres (6 feet) apart from each other; and

(v) participants in the same car adhere to the gathering limits of sections 13.2(a) or (b).

15.1 Persons may not engage in, and persons, business and organizations may not host the following events and activities in-person:

(a) social events;

(b) arts and culture events;

(c) sports, recreation and physical activity events;

(d) special events;

(e) festivals;

(f) wedding receptions; or

(g) funeral visitation or receptions,

but may host these events virtually while adhering to a maximum of 10 persons in one location to support the delivery of the event and complying with the physical distancing requirements set out in section 13.

15.2 Notwithstanding section 15.1, players, participants, and officials:

(a) may engage in organized sport practice and training (recreational, amateur, and professional) outdoors, and in organized arts and culture rehearsals (amateur) outdoors, in groups of 10 persons without masking or

(h) a place designated or established under the authority of the *Correctional Services Act* or the *Youth Criminal Justice Act* (Canada) for the supervision or custody of offenders and includes community-based correctional services;

(i) any administrative tribunal, arbitration proceeding or court operating essential services in the Province under the authority of any provincial or federal enactment, including but not limited to, a justice centre or courthouse under the authority of the *Judicature Act* or a provincial court under the authority of the *Provincial Court Act* or the *Family Court Act*;

(ia) notwithstanding clause (i), the Labour Board must still comply with section 13 when conducting a vote under the *Trade Union Act*.

(j) Emergency Medical Care Incorporated;

(k) persons providing, servicing or repairing medical equipment, such as wheelchairs, red cross beds/equipment, home oxygen equipment;

(l) private not-for-profit community transportation providers;

(m) food production plants; and

(n) fishing vessels.

16.1 Physical distancing requirements and the person limit set out in sections 13 and 13.1 do not apply to the following municipal entities and their contractors when carrying out their work duties:

(a) Police and Fire Services;

(b) Municipal Utilities such as water, wastewater and stormwater;

(c) Maintenance of utilities and municipal facilities;

(d) Transportation;

(e) Road maintenance/repair;

(f) Municipal ICT systems and services;

(g) Public Transit;

(h) Solid Waste, garbage and litter collection and disposal;

(i) Urban Forestry; and

practicing physical distancing or in multiple groups of 10 with physical distancing between each group;

but

(b) may not engage in sports games and competitions arts and culture performances; and

(c) no spectators are permitted to attend the organized sport practice and training (recreational, amateur, and professional), nor the organized arts and culture rehearsals (amateur).

15.3 Notwithstanding section 15.1, persons may participate in, and businesses and organizations may host lessons pertaining to organized sports, arts and culture, provided that:

(a) lessons are held on a one to one person ratio for instructor and participant; and

(b) the instructor and participant:

(i) wear a mask, except when singing or playing a brass or wind instrument; and

(ii) maintain physical distancing requirements of 2 meters (6 feet) during the lesson.

15.3.1 Notwithstanding sections 15.1 and 15.2:

(a) professional artists, musicians, dancers and actors may engage in rehearsal indoors up to a maximum of 15 persons, while adhering to an appropriate COVID-19 Workplace Prevention Plan set out in section 26; and

(b) one musician (professional or amateur) may perform per patio as defined in section 24.1 and the musician must:

(i) wear a mask as defined in section 18 while performing; and

(ii) adhere to the Covid-19 Guidance for Musicians (Vocalists and Instrumentalists) located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Guidance-for-Vocalists-and-Instrumentalists.pdf>.

15.3.2 Any person, business or organization that hosts an event authorized by sections 15 to 15.3.1 is responsible for maintaining oversight of the gathering and for ensuring that all persons in attendance comply with the requirements of this Order.

15.4 No person, business or organization may host a formal in-person meeting or training.

15.4.1 Notwithstanding section 15.4, a business or organization may host a mental health and addictions support group meeting while adhering to the following:

- (a) a maximum of 10 persons in attendance; and**
- (b) all persons in attendance must adhere to masking and physical distancing requirements of 2 metres (6 feet) set out in this Order.**

15.4.2 Notwithstanding section 15.4, a business or organization may carry out meetings and training that are required for safety and essential operation in accordance with the conditions set out in 15.4.1.

16. For greater clarity, physical distancing and the person limit rule set out in sections 13 and 13.1 do not apply to the following organizations, activities, persons, or places:

- (a) hospitals as defined in the *Hospitals Act* and a health authority as defined in the *Health Authorities Act*;**
- (b) profit, not-for-profit or government operated Department of Community Services funded organizations or representatives that are covered under the *Homes for Special Care Act* and the *Children and Family Services Act* including places of safety for children and youth, and customized placements for persons with disabilities;**
- (c) profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* or home care agencies funded under the *Homemaker Services Act*;**
- (d) persons providing care under the self-managed care program, supportive care program, caregiver benefit program funded by the province of Nova Scotia;**
- (e) persons providing support under the Independent Living Support, Supported Apartment and Supervised Apartment Programs funded by the Department of Community Services;**
- (f) homeless shelters receiving operational grants from the Department of Municipal Affairs and Housing, and those operated by religious and other voluntary organizations;**
- (g) unlicensed child-care facilities;**

(j) Municipal logistic, distribution, storage, inventory and repair services.

16.2 Physical distancing requirements and the person limit rule set out in sections 13 and 13.1 do not apply to the following provincial entities and their contractors when carrying out their work duties:

- (a) Transportation and Active Transit;
- (b) Infrastructure and Housing;
- (c) Road maintenance/repair;
- (d) Government building construction and/or repair; and
- (e) Enforcement or compliance officers authorized by their statutory appointments or delegated authority to inspect, investigate and/or enforce provincial legislation while carrying out their powers pursuant to the relevant statutory authority.

17. Gatherings for sleep over camps held by a recognized business or organization are cancelled for 2021 unless otherwise amended.

18. For the purpose of sections 18.2 -18.7, a “mask” means a commercial medical or non-medical mask or a home-made mask made as per the PHAC instructions located at: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/sew-no-sew-instructions-non-medical-masks-face-coverings.html>, that covers the nose and mouth.

18.1 For the purpose of section 18.2, a “public place” means the part of the following places accessible to the public,

insofar as it is enclosed:

- (a) a retail business, a shopping centre, or a building or room of a business where personal care services are provided;
- (b) a restaurant or a liquor licensed establishment, including the kitchen and preparatory space of a restaurant or a liquor licensed establishment;
- (c) a place of worship or faith gathering;
- (d) a place where activities or services of a cultural or entertainment nature are offered;
- (e) a place where sports are played, fitness, recreational or leisure activities are carried on;

(f) a rental hall or other place used to hold events, including conventions and conferences, or to hold receptions;

(g) a place where municipal or provincial government services are available to the public;

(h) a common area, including an elevator, of a tourist accommodation establishment;

(i) a lobby, reception area or elevator in an office building;

(j) a common area or public space on a university or college campus;

(k) a train or bus station, a ferry terminal, or an airport;

(m) common areas of a multi-residential building;

(n) all common areas of private indoor workplaces;

(o) private indoor workplaces where there are:

(i) interactions with the public;

(ii) areas with poor ventilation; or

(iii) areas where physical distance as set out in section 13 cannot be maintained,

and insofar as it is outdoors:

(p) all serviced areas of a restaurant or a liquor licensed establishment, including their patios but excluding holes on the golf course that are licensed;

(q) organized outdoors gatherings such as public markets, special or temporary events where 2 metres (6 feet) physical distancing cannot be consistently maintained; and

(r) outdoors where physical distancing cannot be maintained such as playgrounds and parks.

18.2 All persons must wear a mask that covers their nose and mouth while present in a public place.

18.3 Notwithstanding section 18.2, a person is exempt from the requirement to wear a mask in a public place if the person:

(a) is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;

(b) for whom the wearing of a mask is not possible because of the person's medical condition;

(c) is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*;

(d) is in the public place receiving care or being provided a service or while participating in a physical or other activity requiring the mask be removed, in which case the person may remove the mask for the duration of the care, service or activity;

(e) removes the mask momentarily for identification or ceremonial purposes;

(f) is in a courtroom, jury room or secured area in a courthouse, or room where a proceeding or meeting of an administrative tribunal established by legislation is being held; or

(g) is a performer at a virtual event or officiant in the course of performing activities requiring vocalization such as talking or singing at an event or activity as described in sections 15 or 15.1.

18.4 All persons must wear a mask that covers their nose and mouth as defined in section 18 while travelling on vehicles providing transportation to the public, including:

(a) any municipally operated public transit, including municipally operated buses and ferries;

(b) any public passenger vehicle licensed under the *Motor Carrier Act*, including community transit vehicles, commercial vehicles (shuttle vans), and vehicles providing charters and/or tours;

(c) any school buses licensed under the *Motor Carrier Act* and any vehicles of any capacity operated by private schools recognized by the Minister of Education and Early Childhood Development;

(d) commuter vehicles and courtesy vehicles as defined under the *Motor Carrier Act*, vans, mini-buses, or buses of any passenger capacity providing services to the public;

(e) any vehicles serving residents and staff of facilities listed in section 20.1; and

(f) taxicabs regulated by municipalities under the authority of the *Motor Vehicle Act*.

18.5 Notwithstanding section 18.4, the following persons are exempt from the requirement to wear a mask while travelling on vehicles providing transportation to the public:

(a) a person is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;

(b) a person for whom the wearing of a mask is not possible because of the person's medical condition; and

(c) a person who is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*.

18.6 A person may remove the mask momentarily for identification purposes when boarding any public transit set out in section 18.4.

18.7 For greater certainty, the requirement to wear a mask, as set in sections 18.2 and 18.4, is the minimum standard that persons and businesses must adhere to, and where the business's plan approved in accordance with section 26.1 of this Order imposes a greater standard, then that standard applies.

19. Effective 6:00a.m. June 3, 2021 all public schools located in Halifax Regional Municipality and the Sydney Academy and Riverview Families of Schools located in Cape Breton Regional Municipality are open.

19.1. Except those schools listed in section 19, effective 6:00a.m. June 2, 2021, all public schools under the jurisdiction of a regional centre for education or the Conseil Scolaire Acadien Provincial are open and all private schools may open at the direction of the private school.

19.2 Childcare facilities and family childcare homes regulated under the *Early Learning and Child Care Act*:

(a) may remain open; and

(b) directors, caregivers, staff, visitors and children over two years old must wear a mask as defined in section 18, unless subject to one of the exemptions as set out in section 18.3.

**PART III
LONG TERM CARE FACILITIES
AND
OTHER VULNERABLE POPULATIONS**

20. Effective 8:00a.m. June 2, 2021, except where otherwise stated in this Order, the restrictions on long term care facilities and other vulnerable populations apply to all persons present and residing in Nova Scotia.

20.1 Notwithstanding section 16(b) and (c) and subject to section 20.2, all for-profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* and all Adult Residential Centers and Regional Rehabilitation Centers funded and licensed by the Department of Community Services under the *Homes for Special Care Act* must comply with Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:
<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>;

20.2 All long term care facilities licenced by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act*, and all residents of such facilities must comply with the process for isolating COVID-19 positive long term care residents set out in Schedule "A", "COVID-19 Management Long Term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:
<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.3 All long term care facilities licensed by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are open to family for outdoor visits, specialized workers such as a hairstylist, and 2 designated caregivers, in accordance with the terms and conditions set out in Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at: <https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.4 All residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* not referred to in section 20.3 may have outside visitors so long as approved by the home in which they reside and comply with all general public health measures required under this Order.

20.5 Subject to 20.6, all residents in homes licensed by the Minister of Health and Wellness are not permitted to have community access, except residents of Residential Care Facilities who are permitted community access for work or school as approved by the facility in which they reside.

20.6 Notwithstanding section 20.5, all residents in homes licensed by the Minister of Health and Wellness under the *Homes for Special Care Act* may participate in drives by a designated caregiver or staff, but such outings must not include:

- (a) other passengers in the case of drives by a designated caregiver; or
- (b) stops or drive throughs.

20.7 All residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* are permitted to have community access as long as they comply with all general public health measures required under this Order.

20.8 For the purpose of section 20.9, “Adult Day Program” means a planned program of activities in a professional care setting designed for older adults who require supervised care during the day, or those who are isolated and lonely. Adult day care centers enable seniors to socialize and enjoy planned activities in a group setting, while still receiving needed health services. At the same time, they offer family caregivers respite from caregiving duties while knowing that their loved one is in a safe place.

20.9 All senior’s Adult Day Programs are closed, except for provision of respite care.

20.10 All Day Programs for persons with disabilities funded by the Department of Community Services are closed, except for scheduled vaccine clinics at these locations.

20.11 For greater clarity, nothing in this Order prevents the:

- (a) discharge of a COVID-19 patient from a hospital to a long-term care or residential care facility;
- (b) transfer of a COVID-19 patient from community to a long-term care or residential care facility; or
- (c) return of a COVID-19 patient who has left a long-term care or residential care facility for healthcare services back to that facility after receiving treatment at a hospital.

PART IV BUSINESSES, ORGANIZATIONS AND PROFESSIONS

21A Effective 8:00a.m. June 2, 2021, except where otherwise stated in this Order, the restrictions on businesses, organizations and professions apply to all established

businesses, organizations and professions carrying on business and operating in Nova Scotia.

21.1 The *Occupational Health and Safety Act*, 1996, c.7, s.1, is hereby incorporated by reference and must be followed by all employers, contractors, constructors, suppliers, owners and employees and each shall take every precaution that is reasonable in the circumstances to ensure the health and safety of all persons at or near a workplace.

22. All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may not carry out COVID-19 Point of Care Screening Tests (PCTs) unless the business or organization:

(a) has obtained prior approval from the Office of the Chief Medical Officer of Health; and

(b) complies with any direction issued by me, as Chief Medical Officer of Health.

23. Subject only to specific closures or limitations directed elsewhere in this Order, all not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may continue to operate but must implement physical distancing of 2 metres (6 feet) within all workplaces and meeting spaces, except where otherwise provided in this Order.

23.1 Any not-for-profit or for-profit business or organization carrying on business in Nova Scotia that cannot maintain the physical distancing requirements set out in section 13 of this Order must limit the number of customers or clients on its premises to no more than 10 persons at a time.

24. Restaurants and liquor licensed establishments are:

(a) restricted to providing food and alcohol take-out and delivery service only; and

(b) prohibited from offering in-person dining except to serve guests of the hotel within which a restaurant or licensed establishment is located.

24.1 For the purpose of sections 24.2(a) and (b), a "patio" shall:

(a) have no portion of the patio located within the exterior walls of a building;

(b) contain permanent openings in walls and/or roof totalling not less than 50% of the patio floor area; and

(c) have all seating on the patio located within 25 feet of an opening.

24.2 Notwithstanding section 24(b), restaurants and liquor licensed establishments may provide in-person patio dining (excluding buffets) while adhering to the following:

- (a) all restaurants may offer in-person patio dining provided the operator:**
 - (i) maintains a minimum physical distance of 2 metres (6 feet) or a physical barrier between tables, booths and single seats;**
 - (ii) no group of patrons shall have more than 10 persons at a table;**
 - (iii) ensures patrons remain seated at their table, except while waiting to be seated, going to the bathroom, and getting ready to leave;**
 - (iv) ensures patrons wear masks when not consuming food or alcohol consumption;**
 - (v) ensures staff (servers and kitchen) wear masks while carrying out their work duties;**
 - (vi) ceases in-person patio dining service to customers effective 11:00p.m.; and**
 - (vii) closes by midnight,**

and

(b) all liquor licensed establishments, including liquor manufacturers (as defined in the *Liquor Control Act*) may offer in-person patio dining provided the licensee:

- (i) ensures no group of patrons have more than 10 persons per table;**
- (ii) maintains a minimum physical distance of 2 metres (6 feet) or a physical barrier between tables, booths and single seats;**
- (iii) provides food and alcohol consumption only for in-seat service;**
- (iv) ensures food (excluding buffets) and alcohol is delivered to the table by staff;**
- (v) ensures food and alcohol remains at the table;**
- (vi) ensures patrons remain seated at their table, except while waiting to be seated, going to the bathroom, participating in a game/activity being held in the establishment and getting ready to leave;**

(vii) ensures patrons comply with the physical distancing requirements set out in section 13;

(viii) ensures patrons wear masks when not consuming food or alcohol consumption;

(ix) ensures staff (servers and kitchen) wear masks while carrying out their work duties;

(x) ceases in-person patio dining service to customers effective 11:00p.m.; and

(xi) closes by midnight.

24.3 Liquor boutiques, distilleries, breweries, and wineries:

(a) may remain open but must, at all times, limit the number of customers to a maximum of 25% of allowable occupancy or 120 square feet per person for retail purchase and sale for offsite consumption,

but

(b) are prohibited from offering in-person tastings, samplings or in-person dining, except in-person patio dining in accordance with section 24.2(a).

24.4 Restaurants, liquor licensed establishments, liquor boutiques, distilleries, breweries, and wineries offering in-person patio dining service must:

(a) collect and maintain records of each patron contact information that includes the following minimum data:

(i) name(s);

(ii) contact telephone number;

(iii) date; and

(iv) time,

that the patron was at the restaurant or liquor licensed establishment;

(b) retain information collected under section 24.1 for a period of 30 calendar days and destroy it on the following day immediately thereafter;

(c) provide the information collected under section 24.1 to the Chief Medical Officer of Health or his delegate in electronic form; and

(d) only use the information collected under section 24.1 for the purpose of provision to the Chief Medical Officer of Health in compliance with this Order and may not use it for any other purpose.

24.5 Liquor licensed establishments and non-liquor licensed establishments, including community centres, charities or organized clubs, are prohibited from hosting patrons for activities such as darts, pool, bingo or bowling.

25. Regulated and unregulated health professions practicing may continue to practice and provide services within their scope of practice if they have a Workplace COVID-19 Prevention Plan that has been approved by the Chief Medical Officer of Health.

26. All not for-profit, for-profit businesses, organizations and professions named in Part IV of this Order shall, as a requirement of their ongoing operations, develop and comply with a Workplace COVID-19 Prevention Plan, as amended from time to time.

26.1 In addition to the physical distancing requirements and person limit rule set out in sections 13 and 23.1, the Workplace COVID-19 Prevention Plan required by section 26 shall address the following:

(a) how to work and interact with customers or clients;

(b) physical distancing in the workplace;

(c) cleaning;

(d) equipment;

(e) preparing employees to return to work;

(f) preparing for customers or clients; and

(g) monitoring and communicating of plan,

and may be substantially similar to those proposals listed in Schedule "B", located at: <https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf> for similar businesses or health professionals and must be made available for review by the Chief Medical Officer of Health.

26.2 All businesses or regulated health professionals that are a member of an association listed in Schedule "B" must adopt as their Workplace COVID-19 Prevention Plan the proposal submitted by their association and must be made available for review by the Chief Medical Officer of Health.

26.3 For greater certainty, in the case of conflict between a Workplace COVID-19 Prevention Plan and this Order, the more stringent provision applies.

26.4 Effective 8:00a.m. June 1, 2021, all Provincial Park campgrounds may open.

26.5 All privately operated campgrounds may open and must operate in accordance with the terms and conditions as approved by the Chief Medical Office of Health referenced in Schedule "B" located at:

<https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf>

27. Casino Nova Scotia (Halifax and Sydney locations) and Video Lottery Terminals are closed.

28. Subject to 28.2 and 28.3, all not-for-profit and for-profit fitness facilities such as gyms and yoga studios, sport and recreational facilities such as indoor pools, arenas, tennis courts, and large multipurpose recreation facilities:

(a) are closed to patrons,

but may open

(b) to offer personal training indoors on a one to one person ratio for instructor and participant, or multiple groups of a one to one ratio for instructor and participant while ensuring 2 metres (6 feet) physical distance between participants;

(c) to offer virtual classes; and

(d) outdoor pools up to a maximum of 10 persons, ensuring 2 metres (6 feet) physical distance between participants; and

(e) to perform administrative and operational functions.

28.1 Businesses and organizations that offer indoor recreation and leisure activities such as indoor play areas, arcades, climbing facilities, dance classes and music lessons are closed.

28.2 All not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may offer outdoor fitness classes and other recreational activities up to a maximum capacity of 10 persons if held off their premises, or multiple groups of 10 each on their premises, while ensuring 2 metres (6 feet) physical distance between participants.

28.3 Notwithstanding section 28.1, all not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may host lessons for recreational activities, provided that:

**(a) lessons are held on a one to one person ratio for instructor and participant;
and**

(b) the instructor and participant:

(i) wear a mask; and

**(ii) maintain physical distancing requirements of 2 meters (6 feet) during
the lesson.**

29. All personal service establishments such as hair salons, barber shops, spas, nail salons and body art establishments may open for provision of personal services by appointment only but are prohibited providing services that require a patron to remove their mask as defined in section 18.

30. The Art Gallery of Nova Scotia and all museums and public libraries are closed, but libraries may offer curbside pickup and drop-off of books and other materials.

31. For the purpose of sections 31.1 to 31.2, "retail business" means a business operating on an ongoing basis at a fixed location primarily selling goods or products for use or consumption by individual purchasers.

31.1 A retail business that engages in the retail sale, or rental, of items to the public shall comply with the following conditions:

(a) the number of persons occupying any retail space that is open to the public in the business does not exceed 25 per cent of the allowable occupancy or 120 square feet per person of the particular retail space;

(b) in accordance with section 13, members of the public must be able to maintain a physical distance of at least 2 metres (6 feet) from every other person in the place of business, except those persons residing in the same household;

(c) no patrons may be permitted to line up inside or line up or congregate outside of the establishment unless they are,

(i) maintaining a physical distance of at least 2 metres (6 feet) from other persons inside or outside the establishment, and

(ii) wearing a mask or face covering in a manner that covers their nose and mouth, unless they are entitled to any of the exceptions set out in section 18.3; and

(d) the person responsible for the place of business must ensure that music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db.

31.2 Shopping malls shall comply with the following conditions:

(a) in accordance with section 13, members of the public must be able to maintain a physical distance of at least 2 metres (6 feet) from every other person in the shopping mall, except those persons residing in the same household;

(b) no patrons may be permitted to line up inside or line up or congregate outside of the shopping mall unless they are,

(i) maintaining a physical distance of at least 2 metres (6 feet) from other groups of persons inside or outside the shopping mall, and

(ii) wearing a mask or face covering in a manner that covers their mouth, nose and chin, unless they are entitled to any of the exceptions set out in section 18.3;

(c) no line up outside any one retail space located inside the shopping mall shall exceed 10 persons;

(d) the person responsible for the shopping mall must ensure that:

(i) music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db;

(ii) patrons are not permitted to loiter in any area of the shopping mall; and

(iii) directional markings are provided to manage the flow of pedestrians within the mall,

(e) the non-retail public areas in the mall shall be closed other than for traffic flow/store access and washroom access;

(f) notwithstanding clause 31.2(e), food courts are open to the public but:

(i) food court vendors may provide take out food services;

(ii) tables in food courts may only be used by persons who work in the mall or the public;

(iii) a minimum of 2 metres (6 feet) is maintained between patrons seated at food court tables and between other patrons in the food court; and

(iv) patrons must wear a mask as defined in section 18 except when consuming food or beverage.

**PART V
EXCEPTIONS**

32. Under exceptional circumstances and under the authority granted to me as the Chief Medical Officer of Health under Part I of the *Health Protection Act*, I may exercise discretion to grant an exception to any term and condition of this Order.

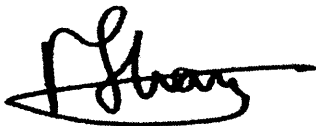
**PART VI
PENALTIES**

33. Any direction provided by a medical officer of health to a person, business, organization or other entity pertaining to COVID-19 and the terms and conditions of this Order must be followed.

34. Failure to comply with this health protection order may be considered a breach of this Order issued under the *Health Protection Act* and may result in penalties under the *Act*.

This Order remains in effect until notice is provided by myself, as Chief Medical Officer of Health, under the authority granted under Part I of the *Health Protection Act* and will be updated from time to time.

Signed:



Dr. Robert Strang
Chief Medical Officer of Health
Nova Scotia Department of Health and Wellness

cc The Honourable Iain Rankin, Premier of Nova Scotia
 The Honourable Zach Churchill, Minister of Health and Wellness
 Laura Lee Langley, Deputy to the Premier and Clerk of Executive Council
 Dr. Kevin Orrell, Deputy Minister of Health and Wellness
 Dr. Shelley Deeks, Deputy Chief Medical Officer of Health
 Tina M. Hall, Legal Counsel, Nova Scotia Dept. of Justice

2021

Hfx No. 506040

This is Exhibit "B" referred to
In the Affidavit of Dr. Robert Strang
Affirmed before me on June 15, 2021



Duane A. Eddy

A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

Nova Scotia COVID-19 Wave 2 and 3 Summary

October 1, 2020 – June 11, 2021

NS Dept. Health & Wellness

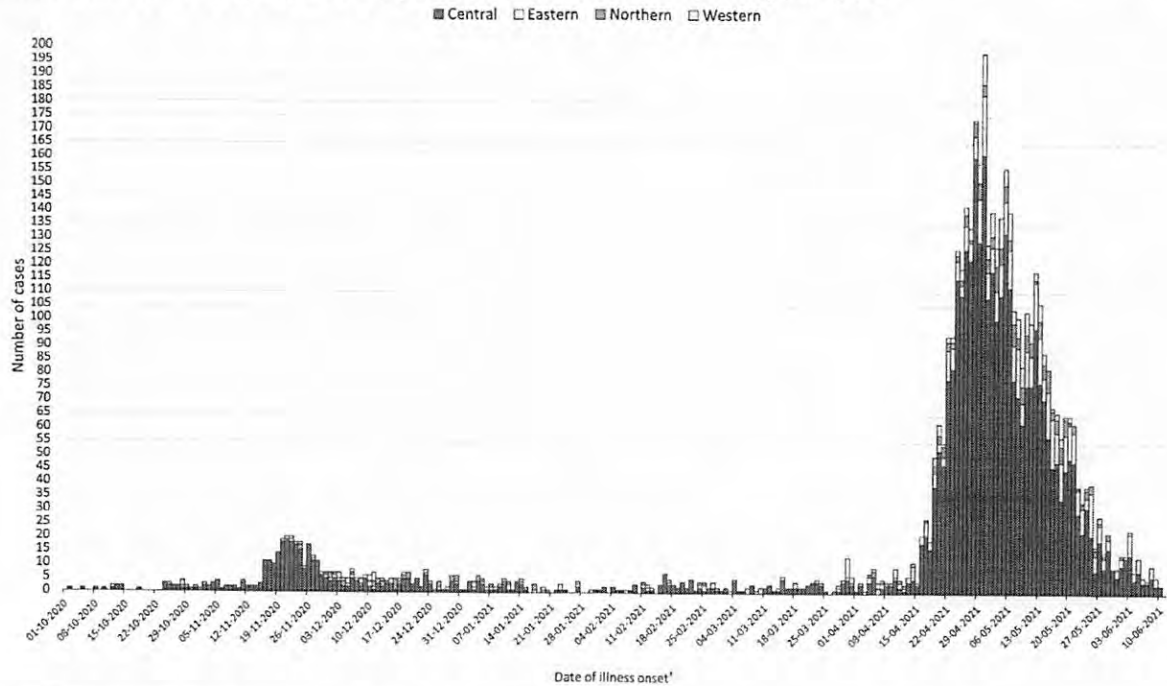
HIGHLIGHTS

- Since March 1, 2020, there have been a total of 5729 confirmed cases of COVID-19 and 89 deaths reported.
- During Wave 3 (April 1, 2021- present):
 - 3987 confirmed cases and 23 deaths have been reported. The cases reported in Wave 3 constitute 70% of the total cases reported in Nova Scotia since March 1, 2020.
 - There have been 236 hospitalizations (non-ICU and ICU) compared to 12 during Wave 2.
 - 61% of hospitalizations occurred in individuals <60 years of age
 - 18.2% of contacts became cases, compared to 7.6% in Wave 2 suggesting that the virus is more transmissible.

WAVE 2 AND 3 SUMMARY

Part One: Cases

Figure 1. Epidemic curve of confirmed and probable COVID-19 cases by Zone of residence and date of illness onset, Wave 2, and Wave 3 (October 1st 2020-June 11, 2021)[†], n=4652



[†]date of illness onset is the first of: symptom onset and date of laboratory specimen collection. Due to the lag time in reporting of cases, not all cases for the previous 7 days are included.

Table 1. Summary of confirmed COVID-19 cases, COVID-19 case status, and current case prevalence rate by zone of residence, Wave 3 (Apr 1 - June 11, 2021)

	Cumulative Confirmed Cases	Total Resolved	Total Deceased	Current case prevalence rate per 100,000 population
Western	165	160	1	2.0
Northern	167	159	0	5.4
Eastern	493	451	1	26.1
Central	3162	3051	21	20.3
NS	3987	3821	23	15.2

Part 2: Serious Outcomes (Hospitalizations, ICU admissions, and Deaths)

Table 2. Most severe outcome reported among 3987 confirmed cases of COVID-19, Wave 3 (Apr 1 - June 11, 2021)

Most severe outcome	Wave 3 (Apr 1, 2021 - present)		
	Total		Age
	n	%	median
Hospitalized - non-ICU	175	4.4%	53
Hospitalized - ICU	61	1.5%	55
Deceased	23	0.6%	75

Number of patients currently hospitalized (excl. ICU):	4
Number of patients currently in ICU:	6

Note: data for patients currently hospitalized is based on inpatient encounters (NSHA and IWK Inpatient Census Data from Meditech and STAR registration system as of 00:00 the day of reporting) with a COVID-19 positive laboratory result or active case status.

Note: Age and sex data for deaths are only reported for those who have information available in Panorama at the time of report and is subject change as new information becomes available.

Part 3: Transmission and contacts

Table 3a: Contacts of COVID-19 cases who have also become cases, Wave 2 and 3

Indicator	WAVE 2 (Oct 1, 2020 – Mar 31, 2021)	WAVE 3 (≥ Apr 1, 2021)
# of contacts who became a case	389	2600
% of contacts who became a case	7.6	18.2

The proportion of contacts who have become cases has more than doubled from Wave 2 to Wave 3, reflecting the increased transmissibility of the virus.

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

and

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

and

The Canadian Civil Liberties Association

Respondents

Supplemental Affidavit of Hayley Crichton

I make oath/affirm and give evidence as follows:

1. I am Hayley Crichton, the Director of Public Safety and Investigations with the Department of Justice for the Province of Nova Scotia.
2. I have personal knowledge of the evidence sworn to in this Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. The Nova Scotia Minister of Municipal Affairs renewed the Provincial declaration of a state of emergency ending on June 27, 2021 unless renewed, in accordance with the *Emergency Management Act*, 1990, c. 8, s. 1; 2005, c. 48, s. 1. A true copy of the declaration is attached hereto as **Exhibit "A"**.
5. In Nova Scotia, mask requirements and adherence to restrictions are set out in the Public Health Order.
6. The Restated Public Health Order issued under section 32 of the *Health Protection Act* 2004, c. 4, s. 1 by Dr. Robert Strang, was last updated as of the date of this my sworn affidavit on

June 4, 2021 (hereinafter, the "Public Health Order"). A true copy of the Public Health Order is attached hereto as **Exhibit "B"**.

7. On May 12, 2021, the Attorney General of Nova Scotia filed a Notice of Application in Chambers (*ex parte*) for an Injunction Order restraining the Respondents from attending and carrying out activities that cause illegal public gatherings to occur in Nova Scotia.
8. The Injunction Order was granted by the Supreme Court of Nova Scotia on May 14, 2021.
9. After the Injunction Order was issued by the Nova Scotia Supreme Court, I received information from law enforcement regarding enforcement activities and incidents in relation to the Injunction Order and Public Health Order.
10. A true copy of the Injunction Order issued by the Nova Scotia Supreme Court on May 14, 2021 is attached hereto as **Exhibit "C"**.
11. On May 27, 2021, I received a situation report from Royal Canadian Mounted Police (RCMP) Officer Jessica Cogswell pertaining to an illegal public gathering that occurred on or about May 23, 2021. A true copy of the RCMP situation report is attached hereto as **Exhibit "D"**.
12. I am advised by the situation report I received from the RCMP, on May 27, 2021, and referenced in paragraph 11 of this my sworn affidavit, and do verily believe the following:

PURPOSE:

- To update the Attorney General of an illegal gathering and summary offence tickets (SOTS) issued under the Public Health Act.

BACKGROUND:

- On May 23, 2021, Cole Harbour RCMP responded to a report of a large house party at a residence in Cole Harbour.,
- Upon arrival, loud music was heard coming from the home and a disco ball could be seen from a distance.
- RCMP members were refused entry into the home and the music and lights were turned off.
- Seventeen vehicles were located at the property.
- Members queried all license plates, two vehicles were registered to the residence and the remaining were registered to owners residing within, and outside of Halifax Regional Municipality.
- Members conducted traffic stops throughout the night on vehicles leaving the property.

CURRENT STATUS:

- Nine SOTS have been issued to date, totaling \$21,798.00.
- A Summary Offence Ticket will be issued to the home owner.
- The investigation continues to identify the remaining persons in attendance.

STRATEGIC CONSIDERATIONS:

- None at this time.

STRATEGIC COMMUNICATIONS:

- "H" Division Strategic Communications is engaged.

RECOMMENDATIONS

- Nil.

13. On May 28, 2021, I received a situation report from Royal Canadian Mounted Police (RCMP) Officer Jessica Cogswell pertaining to illegal public gatherings. A true copy of the RCMP situation report is attached hereto as **Exhibit "E"**.
14. I am advised by the situation report I received from the RCMP, on May 28, 2021, and referenced in paragraph 13 of this my sworn affidavit, and do verily believe the following:

PURPOSE:

- To update the Attorney General of a number of Summary Office Tickets issued under the Health Protection Act (HPA) in relation to a religious gathering.

BACKGROUND:

- On May 2, 2021, Kingston RCMP received several calls about a large gathering taking place at a church in ██████████, Nova Scotia.
- RCMP members attended, explained the HPA. Clients on site refused to disperse, a formal warning was issued to the church.
- On May 9, 2021, ██████████ RCMP received several calls about a large gathering taking place at the same church in Weston. RCMP members attended, explained the HPA and advised all to disperse. Clients on site refused to disperse, 26 Summary Offence Tickets were issued under the HPA.
- On May 15, 2021, the leader of the church was contacted by Kingston RCMP and was warned that a gathering at the church would result in enforcement action.
- On May 16, 2021, Kingston RCMP attended the church, a service was in progress.

CURRENT STATUS:

- Police remained on scene until the end of the service.
- 7 Summary Offence Tickets were issued to clients under the HPA.
- 1 Summary Offence Ticket was issued to the church.
- The clients of the church indicated that they are planning on returning the following Sunday.

STRATEGIC CONSIDERATIONS:

- The Officer in Charge of Southwest Nova District is aware.
- The Officer in Charge of Criminal Operations is aware.

STRATEGIC COMMUNICATIONS:

- "H" Division Strategic Communication Section is engaged.

RECOMMENDATIONS:

- NIL

15. On May 28, 2021, I received a situation report from Dan Kinsella, Chief of Police for the Halifax Regional Police. I am advised by Dan Kinsella and do verily believe the following:

COVID-19

Response May 15

Background:

On Saturday, May 15, 2021, two events took place in Halifax involving various COVID-19 fractions, at which Halifax Regional Police officers used enforcement actions, including summary offence tickets and arrests.

HRP had reached out to the organizers of both events in advance to make them aware of the current public health restrictions, including, a recent court order issued on Friday. The events proceeded anyway.

Detailed overview:

May 15, 2021

1) **Anti-mask Freedom Rally - Anti-mask Freedom Rally** - scheduled from 1300-1500 hours on Citadel Hill. Court injunction led to organizers of this event announcing cancellation of same via social media, however attendees still arrived to partake, in violation of court order, Health Protection and Emergency Management Acts. Arrests and summary offence tickets issued. Approximately 50 people in attendance

Enforcement stats:

- **Health Protection Act (HPA): 9** in total (Five of the nine people that were issued SOTs had to be arrested before they would provide identification).
- **Emergency Management Act (EMA): 2**
- **Arrest: 5** in total, no criminal charges and all released with SOT as stated above
- **File under Investigation: one** ran away and has yet to be identified

2) **Palestine Freedom Rally** - scheduled from 1300-1500 hours at Saint Mary's University parking lot on Inglis Street/Tower Road. Initially only 20 vehicles involved, however event escalated to more than 200 vehicles involved with over 500 people, causing multiple violations under the Health Protection, Emergency Management and Motor Vehicle Acts. Arrests and summary offence tickets issued. Central members tied up for several hours, clearing out the backlog of traffic.

Enforcement stats:

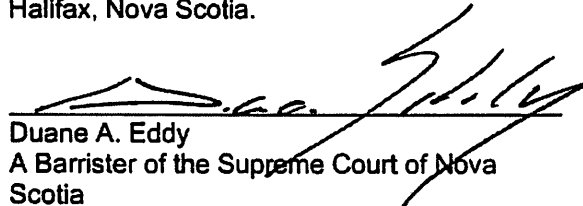
- **Health Protection Act (HPA): 9**
- **Emergency Management Act (EMA): 2**
- **MVA: 6**
- **Arrest: 1** (One male arrested then released with no criminal charges but was issued 4 SOTs).

Strategic Communications:

- Three news releases were issued following the events, as information became available.
- Social media posts were completed in conjunction with the news release.

16. A true copy of the situation report that I received from Dan Kinsella and referenced in paragraph 15 of this my sworn affidavit is attached hereto as **Exhibit "F"**.
17. At all material times the Public Health Order in effect when enforcement measures with respect to the Public Health Order were carried out by law enforcement, as set out in Exhibits D, E, and F of this my sworn affidavit, is attached hereto as **Exhibit "G"**.
18. To the best of my knowledge, information and belief, as of the date of this my sworn affidavit no person has had proceedings brought against them in the Supreme Court of Nova Scotia for a Contempt Order in relation to the Injunction Order that was granted on May 14, 2021.
19. To the best of my knowledge, information and belief, as of the date of this my sworn affidavit law enforcement have engaged in enforcement measures pertaining to the Public Health Order issued under s. 32 of the *Health Protection Act*.

Sworn to before me on June 16, 2021 at
Halifax, Nova Scotia.


Duane A. Eddy
A Barrister of the Supreme Court of Nova
Scotia


Hayley Crichton

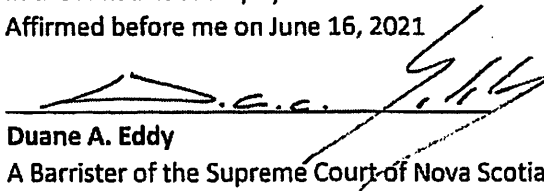
DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

TAB A

2021

Hfx No. 506040

This is Exhibit "A" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021



Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

Schedule "A"
Renewal of Provincial State of Emergency by Minister
(subsection 19(2) of the Emergency Management Act)

Emergency area:

On March 22, 2020 a State of Emergency was declared for all the Province of Nova Scotia.

Nature of the emergency:

The COVID-19 virus, which has caused a pandemic, is in the Province and that event requires prompt coordinated action or regulation for the protection of property and for the health and safety of persons in Nova Scotia.

I am satisfied that an emergency, as defined in clause 2(b) of Chapter 8 of the Acts of 1990, the *Emergency Management Act*, continues to exist or may exist in the Province.

While under a Provincial State of Emergency, I may require any or all of the actions specifically listed under clauses 14(a) to (m) of the *Emergency Management Act*, or anything else I determine is necessary for the protection of property and the health or safety of persons in the Province.

The Directions issued from March 22, 2020 until today shall continue in place under this renewal unless terminated or changed by me in writing. Further Directions may be issued and posted for the public throughout the State of Emergency.

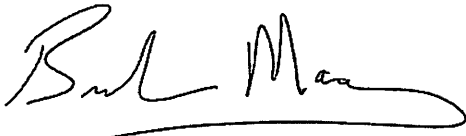
This renewed Declaration, and the associated Directions, are in addition to and do not replace any Orders issued by the Medical Officer of Health under Section 32 of Chapter 4 of the Acts of 2004, the *Health Protection Act*.

This State of Emergency was previously renewed every 14 days for the year period from April 5, 2020 to April 18, 2021, and then from April 18 to May 2, from May 2-16, from May 16-30, and from May 30, 2021 to June 13, 2021.

With the approval of Governor in Council, I hereby further renew the declaration of a State of Emergency for all of the Province to continue on and after **12:00 pm (noon) on Sunday, June 13, 2021**.

If this Declaration is not renewed or terminated earlier, the State of Emergency remains in effect until 14 days after the date and time it is declared, which is **until 12:00 pm (noon) on Sunday, June 27, 2021**.

Dated May 5, 2021, at Halifax, Nova Scotia,



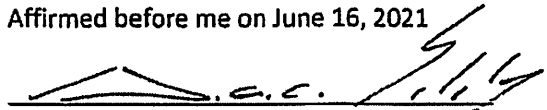
Hon. Brendan Maguire
Minister of Municipal Affairs

TAB B

2021

Hfx No. 506040

This is Exhibit "B" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021

A handwritten signature in black ink, appearing to read "D.A. Eddy", written over a horizontal line.

Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

**RESTATED ORDER #2 OF THE CHIEF MEDICAL OFFICER OF HEALTH UNDER
SECTION 32 of the *HEALTH PROTECTION ACT* 2004, c. 4, s. 1.**

June 4, 2021

Update Log:

June 4, 2021: Sections 2.2, 13.2, 15.3, 15.3.1, 18.1 and 28.3 (amended)
May 31, 2021: Sections 2, 2.2-2.3, 3.2, 13A, 13.2-13.5, 14, 15-15.3, 15.4.2, 18, 19-19.1, 20, 20.3-20.7, 21A, 23.1, 24.1-24.5, 26.4-26.5, 28, 28.2, 29, 31-31.2 (amended) and Sections 15.3.1-15.3.2 (new)
May 21, 2021: Sections 2-2.3, 10-10.1, 12.1, 12.3, 13A, 18.3, 18.7, 19, 20, 21A and 31-31.2.1 (amended) and Sections 15.3.1., 26.4-26.5 and 28.3 (new)
May 13, 2021: Sections 2-2.3, 3.2, 7-7.1, 13A, 13.2, 20 and 21A (amended) and Sections 13.5-13.6 (new)
May 8, 2021: Sections 2-2.3, 3.1-3.2, 4-4.2, 10, 11, 12.1, 12.3-12.4, 13A, 19-19.2, 20, 21A, 22 and 31.1 (amened), and Sections 13.4 and 31.1.2 (new)
May 4, 3021: Sections 2.2, 28.2 and 31.1 (amended) and Section 13.3 (new)
April 29, 2021: Sections 24.3 and 31.2 (amended) and Section 31.2.1 (new)

- TO:**
- 1.) All persons residing in or present in the Province of Nova Scotia;**
 - 2.) All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia;**
 - 3.) Such other persons or entities as may be identified by the Chief Medical Officer of Health or otherwise as set out in this Order.**

ORDER made pursuant to Section 32 of the *Health Protection Act* (Nova Scotia)

WHEREAS Section 32 of the *Health Protection Act* states:

32 (1) Where a medical officer is of the opinion, upon reasonable and probable grounds, that:

- (a) a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary in order to decrease or eliminate the risk to the public health presented by the communicable disease,

the medical officer may by written order require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

WHEREAS COVID-19 has been identified as a communicable disease that presents a risk to public health as defined under s.4(b) of the *Health Protection Act*, and;

WHEREAS I am the Chief Medical Officer of Health for the Province of Nova Scotia and am of the opinion, upon reasonable and probable grounds, that

- (a) a communicable disease (COVID-19) exists; and that there is an immediate risk of an outbreak of the communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary to decrease or eliminate the risk to the public health presented by the communicable disease, and;

WHEREAS as the Chief Medical Officer of Health, I have determined it necessary to issue this Order to the Class of Persons to decrease the risk to public health presented by COVID-19.

Please be advised that:

I, Dr. Robert Strang, Chief Medical Officer of Health, **order** the following:

**PART I
ENTRY, ISOLATION AND QUARANTINE REQUIREMENTS**

1. In this Order,

- (a) “self-isolate” means the requirement of any person who has COVID-19 to remain separate from others in such places and under such conditions to prevent or limit the direct or indirect transmission of COVID-19; and
- (b) “self-quarantine” means the requirement of any person who has been exposed or may have been exposed to COVID-19 during its period of communicability to restrict that person’s activities in order to prevent disease transmission during the incubation period for this disease.

2. Effective 8:00a.m. June 2, 2021, all persons are prohibited from entering Nova Scotia, except as stated herein or set out elsewhere in this Order:

- (a) permanent residents of Nova Scotia and their spouses, partners and dependant children when travelling together;**
- (b) persons who have engaged in essential travel outside Nova Scotia; or**
- (c) spouses, partners and dependant children of the following persons engaged in essential travel, when travelling together with that person:**
 - (i) students coming to study in Nova Scotia;**
 - (ii) essential health care workers;**
 - (iii) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service; and**
 - (iv) a person who has been granted an exception in accordance with section 32.**

2.1 Where any person travels into Nova Scotia in contravention of this Order, a peace officer is hereby authorized and directed to return that person to an interprovincial border and require the person to leave the Province immediately or at such a time as may be directed, and in doing so, may exercise authority under section 46 of the *Health Protection Act*.

2.2 For the purpose of section 2(b), persons engaged in essential travel means:

- (a) a resident of Nova Scotia whose primary employment is in another province;**
- (b) a person required to participate in-person in a legal proceeding in another province;**
- (c) students who are:**
 - (i) international students registered for online or in-person study at a Nova Scotia designated learning institution;**
 - (ii) domestic (Canadian) students who are registered for online or in-person study in the Spring/Summer 2021 semester at a Nova Scotia designated learning institution; or**
 - (iii) returning to their primary or family residence in Nova Scotia after studying outside Nova Scotia;**
- (d) a party to a child sharing arrangement that requires entry into or exit from Nova Scotia;**

(e) a temporary foreign worker as set out in sections 7 to 7.1, a rotational worker as set out in sections 9 to 9.1, a specialized worker as set out in sections 10 and 10.1, and a fish harvester as set out in section 11;

(f) essential health care workers;

(g) a person exempt from self-quarantine following the COVID-19 Protocol for Exempt Travelers;

(h) a person traveling between Nova Scotia and New Brunswick, or Nova Scotia and Prince Edward Island for work, school and childcare only, while following the Nova Scotia-New Brunswick-Prince Edward Island protocol;

(i) a person required to travel to Nova Scotia for essential health services, with accompanying support persons;

(j) a person and their immediate family members living in the same household who are moving to Nova Scotia and have:

(i) an unconditional Agreement of Purchase and Sale to purchase property in Nova Scotia that was executed on or before May 1, 2021; or

(ii) a 1-year Lease Agreement for residential premises in Nova Scotia that was executed on or before May 1, 2021; or

(iii) ownership of property in Nova Scotia and either an Agreement of Purchase and Sale of their home or notice of termination of their Lease Agreement in another province or territory; or

(iv) an accepted Letter of Offer of Employment that is dated on or before May 7, 2021,

and a self-quarantine plan on entry into Nova Scotia that is subject to approval of the Chief Medical Officer of Health or his delegate; or

(k) a person who has been granted an exception in accordance with section 32.

2.3 Effective 8:00a.m. June 2, 2021, all persons seeking entry into Nova Scotia must apply through the Nova Scotia Safe Check-in form and complete daily digital check-ins, located at: <https://travel-declaration.novascotia.ca/en>, except:

(a) persons following the Nova Scotia-New Brunswick-Prince Edward Island protocol;

(b) professional truck drivers;

(c) persons who have received compassionate exceptions; and

(d) essential healthcare workers who travel to and from Nova Scotia and another province or territory to carry out their work duties on an ongoing regular basis or on a locum basis.

3.1 The requirements of section 3.2 apply to all persons residing in or present in the Province of Nova Scotia who:

(a) have travelled outside Nova Scotia or reside in the same household of a person who has travelled outside Nova Scotia; or

(b) are identified as a close contact of a person who has or has been diagnosed with COVID-19; or

(c) are identified as a person diagnosed with COVID-19; or

(d) have been tested for COVID-19 due to the presence of symptoms or as directed by public health and are awaiting the results of their test.

3.2 Effective 8:00a.m. June 2, 2021, those persons listed in section 3.1 must:

(a) self-quarantine or self-isolate, for:

(i) the period commencing on the day of entry into Nova Scotia, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health, or

(ii) the first day of close contact, or first day of symptoms, testing, diagnosis, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health.

(b) During the 14-day period, conduct themselves in such a manner as not to in any way expose any other person to infection or potential infection from COVID-19, and follow all infection control instructions given to them on the Government of Nova Scotia's website, at: <https://novascotia.ca/coronavirus/>, or given to them by Telehealth 811 staff, public health staff or any other staff of a healthcare facility to which they may seek or receive treatment.

(c) After the 14-day period in section 3.2(a.) has lapsed, they may cease self-isolation or self-quarantine if they do not exhibit symptoms of COVID-19.

3.3 All persons are encouraged to complete the online assessment tool should they exhibit symptoms of COVID-19.

3.4 For greater certainty, persons required to self-isolate or self-quarantine in accordance with section 3.2 must remain in their residence or residence grounds and otherwise remove themselves from the presence of others in public while they may be infectious during the 14-day period, so that all precautions necessary to protect others are in place. Specifically, such persons must not enter any buildings, public transportation, or other enclosed spaces (other than their residence) where other people are present.

3.5 Notwithstanding section 3.2(a):

(a) persons who receive a negative COVID-19 test result after being referred for testing by the online assessment tool due to the presence of COVID-like symptoms may cease self-quarantine on the date of receipt of the negative test result.

(b) persons who are required to self-isolate or self-quarantine may leave their residence:

(i) to undergo COVID-19 testing as directed by a Medical Officer of Health; or

(ii) for 1 outing per day for outdoor exercise within walking/running distance of their home or isolation site for a maximum of 1 hour.

4. Notwithstanding section 3.1(a), persons who reside in the same household as a person who has travelled into Nova Scotia or is returning to Nova Scotia from any geographic location outside Nova Scotia for essential travel, are not required to self-quarantine if the traveller, during their 14-day period of self-quarantine, meets all of the following criteria:

4.1 For essential travel set out in subsections 2.2, the traveller:

(a) stays at their place of residence;

(b) has their own separate room in the home (e.g. separate bedroom, basement or attic);

(c) sanitizes their hands before leaving the separate room;

(d) wears a non-medical mask when outside of their separate room;

(e) avoids being in the same space as other household members;

(f) has their own bathroom or if sharing a bathroom then cleans high touch surfaces (e.g. doorknob, tap, toilet handle, sink, etc.) after each use;

(g) has food and beverages prepared by others and accesses them in a non-contact manner;

(h) does not share dishes, drinking glasses, cups, eating utensils, towels, bedding or other items with others in the home;

(i) keeps their personal items (e.g. toothbrush, cups, cell phones, tablets, laptops, etc.) separate from those belonging to others; and

(j) does not share food, drinks or cigarettes or any other items that are put in the mouth.

4.2 For greater clarity, a person who travels to Nova Scotia from any geographic location outside Nova Scotia for non-essential travel must self-quarantine in accordance with section 3.2.

5. Notwithstanding sections 2 and 3.1, persons who are well and showing no symptoms of COVID-19 may enter Nova Scotia for the purposes of facilitating child sharing between parents under an order or agreement providing for joint custody, and in such instances, both the persons facilitating custody and children showing no symptoms of COVID-19 are exempt from the requirement to self-quarantine.

5.1 Further to section 5, parents and children entering or leaving Nova Scotia for the purposes of facilitating child sharing arrangements must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>.

6. Notwithstanding sections 2 and 3.1, individuals who are well and showing no symptoms of COVID-19 and are engaged in a legal proceeding in Nova Scotia, whether the accused, victim, witness, party or lawyer in such proceeding, may enter Nova Scotia for participation in the legal proceeding and are exempt from self-quarantine if the person adheres to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

7. An employer or contractor of any Temporary Foreign Worker entitled to enter Nova Scotia pursuant to the Federal Order in Council 2021-0077, as amended, must first, before the Temporary Foreign Worker enters Nova Scotia, satisfy me, as Chief Medical Officer of Health, that the employer or contractor has made adequate provision for compliance with:

(a) the federal quarantine rules applicable to the Temporary Foreign Workers in the Agriculture and Seafood Sector; and

(b) the self-quarantine requirements set out in section 3.2 of this Order.

7.1 In addition, the employer or contractor and the Temporary Foreign Worker must, for the duration of the entire work period in Nova Scotia:

(a) adhere to all applicable terms and conditions of this Order; and

(b) adhere to the COVID-19 Protocol for Temporary Foreign Workers employed in

Agriculture and Seafood Sectors established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocolfortemporaryforeignworkers-agriculture-and-seafood-sectors-en.pdf>.

(c) comply with any direction issued by me, as Chief Medical Officer of Health, or a Medical Officer of Health with respect to the Temporary Foreign Worker and their employment in Nova Scotia.

8. Notwithstanding sections 2 and 3.1, persons who are required to travel to Nova Scotia or outside Nova Scotia for essential health services, with accompanying support persons as permitted by health authority policy, are exempt from the requirement to self-quarantine but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

9. For the purpose of section 9.1, “rotational worker” means a person who lives in Nova Scotia and travels to work in another province or territory in Canada on a regular schedule or travels outside Canada on a regular schedule and is exempt from self-quarantine under the federal *Quarantine Act*.

9.1 Notwithstanding sections 2 and 3.1, rotational workers must adhere to the self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Rotational-Workers.pdf>.

10. Notwithstanding sections 2 and 3.1, specialized workers who are:

(a) needed for urgent work on critical infrastructure that cannot be done by individuals from within the Province and such work is crucial to the functioning of the Province; or

(b) needed for urgent work that cannot be done by individuals from within the Province and are necessary to preserve the viability of one or more Nova Scotia businesses,

are permitted to enter Nova Scotia from any geographic location outside Nova Scotia. A list of critical infrastructure included in this definition is available at: <https://www.publicsafety.gc.ca/cnt/ntnl-scr/crtcl-nfrstrctr/esf-sfe-en.aspx>.

10.1 Specialized workers permitted to enter Nova Scotia in accordance with section 10 must adhere to self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Specialized-Workers.pdf>.

11. Notwithstanding sections 2 and 3.1, fish harvesters required to enter Nova Scotia from any geographic location outside Nova Scotia to perform the commercial or

licensed activity of catching fish and other seafood for market or other approved activities, excluding recreational fishing, must adhere to self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-fish-harvesters-en.pdf>.

12.1 Notwithstanding section 3.1, workers who are essential to the movement of people and goods, and who must enter Nova Scotia as part of their duty requirements, are exempt from the requirement to self-quarantine, particularly:

(a) healthy workers in the trade and transportation sector who are employed in the movement of goods and people across the Nova Scotia border by land, air, or water, including truck drivers, crew, maintenance and operational workers on any plane, train or ship;

(b) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service;

(c) first responders, including police, fire, EHS paramedic workers; and

(d) essential healthcare workers who travel to and from Nova Scotia and another province or territory to carry out their work duties on an ongoing regular basis or on a locum basis.

but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

12.2 For greater clarity, airline crew employed in the movement of people and goods and who are required to travel to Nova Scotia or from Nova Scotia to carry out their work duties are exempt from the self-quarantine requirements set out in section 3.2.

12.3 Notwithstanding section 3.1, persons who reside in Nova Scotia, New Brunswick or Prince Edward Island and are required to travel between Nova Scotia and New Brunswick or between Nova Scotia and Prince Edward Island on a regular ongoing basis to work, attend a school or post-secondary institution, access child care, or access or provide essential veterinary services located in one of these three provinces are exempt from the requirement to self-quarantine if that person follows the travel protocol at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-NS-NB-PEI-travel.pdf>.

12.4 Persons exempt under sections 12.1 to 12.3 must practice physical distancing of 2 metres (6 feet) to the best of their ability, follow all public health recommendations, closely self-monitor and must self-isolate or self-quarantine should they exhibit any COVID-19 symptoms as set out in the online assessment tool.

**PART II
PHYSICAL DISTANCING,
GATHERING LIMITS,
MASKS AND FACE COVERINGS**

13A Effective 8:00a.m. June 2, 2021, except where otherwise stated in this Order the requirements for physical distancing, gathering limits, masks and face coverings apply to all persons present and residing in Nova Scotia.

13. All persons present and residing in Nova Scotia must maintain physical distancing of 2 metres (6 feet).

13.1 All persons present and residing in Nova Scotia must not participate in any gatherings, whether indoors or outdoors, unless subject to a specific exception set out in this Order.

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing in the same the household, and are not required to practice physical distancing and masking;

(b) where the number of persons living in the same household is 2 persons or less, they may gather together indoors with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing and masking; and

(c) persons may gather together in social groups of up to 10 persons outdoors, and they are not required to practice physical distancing and masking.

13.3 Notwithstanding sections 13.1 and 13.2 and for greater certainty, parties to a child sharing arrangement, or an order or agreement providing for joint custody:

(a) may facilitate and participate in such child sharing or custody arrangement between households,

but

(b) must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>
if a parent or child develops symptoms or tests positive for COVID-19.

13.4 For the purpose of section 13.5, an “illegal public gathering” is defined as a gathering that does not comply with the requirements of this Order, including:

- (a) the attendance limits applicable to gatherings, whether indoors or outdoors;
- (b) physical distancing requirements; and
- (c) masking requirements.

13.5 For greater certainty, persons are prohibited from:

- (a) organizing an in-person gathering, including requesting, inciting, or inviting others to attend an illegal public gathering;
- (b) promoting an illegal public gathering via social media or otherwise; or
- (c) attending an illegal public gathering of any nature, whether indoors or outdoors.

14. Notwithstanding section 13.1, persons may engage in outdoor physical activity while adhering to the gathering limitations set out in section 13.2 or the gathering limitations while participating in an outdoor fitness class and other recreational or leisure activities as set out in sections 28, 28.2 and 28.3, and in doing so, must adhere to physical distancing requirements of 2 metres (6 feet) as set out in section 13.

15. Persons may engage in, and business and organizations may host the following events and activities in-person:

- (a) weddings;
- (b) funerals;
- (c) faith gatherings;
- (d) drive-in or parking lot faith service; and
- (e) drive-in movie theatre,

while adhering to the following:

- (a) a maximum of 5 persons plus the officiant if the wedding or funeral is held indoors, or a maximum of 10 persons plus the officiant if the wedding or funeral held outdoors;
- (b) a maximum of 10 persons plus the officiant for outdoor faith gatherings;

(c) all persons in attendance at events (a) to (c) must practice physical distancing, except persons residing in the same household as set out in section 13.2(a) or additional persons as set out in sections 13.2(b) and (c); and

(d) all persons in attendance at a drive-in or parking lot faith service, or drive-in movie theatre must adhere to the following conditions:

- (i) the service or movie is conducted over speakers or by remote radio broadcast;
- (ii) there is no contact between cars and no transfer of things between cars;
- (iii) participants remain in their respective vehicle while “attending” the service, unless accessing a washroom facility or concession stand and while doing so, must adhering to protocol for gathering limits, physical distancing, and masking requirements set out in this Order;
- (iv) participants practice physical distancing among vehicles, such that vehicles must be at least 2 metres (6 feet) apart from each other; and
- (v) participants in the same car adhere to the gathering limits of sections 13.2(a) or (b).

15.1 Persons may not engage in, and persons, business and organizations may not host the following events and activities in-person:

- (a) social events;
- (b) arts and culture events;
- (c) sports, recreation and physical activity events;
- (d) special events;
- (e) festivals;
- (f) wedding receptions; or
- (g) funeral visitation or receptions,

but may host these events virtually while adhering to a maximum of 10 persons in one location to support the delivery of the event and complying with the physical distancing requirements set out in section 13.

15.2 Notwithstanding section 15.1, players, participants, and officials:

- (a) may engage in organized sport practice and training (recreational, amateur, and professional) outdoors, and in organized arts and culture rehearsals (amateur) outdoors, in groups of 10 persons without masking or

practicing physical distancing or in multiple groups of 10 with physical distancing between each group;

but

(b) may not engage in sports games and competitions arts and culture performances; and

(c) no spectators are permitted to attend the organized sport practice and training (recreational, amateur, and professional), nor the organized arts and culture rehearsals (amateur).

15.3 Notwithstanding section 15.1, persons may participate in, and businesses and organizations may host lessons pertaining to organized sports, arts and culture, provided that:

(a) lessons are held on a one to one person ratio for instructor and participant; and

(b) the instructor and participant:

(i) wear a mask, except when singing or playing a brass or wind instrument; and

(ii) maintain physical distancing requirements of 2 meters (6 feet) during the lesson.

15.3.1 Notwithstanding sections 15.1 and 15.2:

(a) professional artists, musicians, dancers and actors may engage in rehearsal indoors up to a maximum of 15 persons, while adhering to an appropriate COVID-19 Workplace Prevention Plan set out in section 26; and

(b) one musician (professional or amateur) may perform per patio as defined in section 24.1 and the musician must:

(i) wear a mask as defined in section 18 while performing; and

(ii) adhere to the Covid-19 Guidance for Musicians (Vocalists and Instrumentalists) located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Guidance-for-Vocalists-and-Instrumentalists.pdf>.

15.3.2 Any person, business or organization that hosts an event authorized by sections 15 to 15.3.1 is responsible for maintaining oversight of the gathering and for ensuring that all persons in attendance comply with the requirements of this Order.

15.4 No person, business or organization may host a formal in-person meeting or training.

15.4.1 Notwithstanding section 15.4, a business or organization may host a mental health and addictions support group meeting while adhering to the following:

- (a) a maximum of 10 persons in attendance; and**
- (b) all persons in attendance must adhere to masking and physical distancing requirements of 2 metres (6 feet) set out in this Order.**

15.4.2 Notwithstanding section 15.4, a business or organization may carry out meetings and training that are required for safety and essential operation in accordance with the conditions set out in 15.4.1.

16. For greater clarity, physical distancing and the person limit rule set out in sections 13 and 13.1 do not apply to the following organizations, activities, persons, or places:

- (a) hospitals as defined in the *Hospitals Act* and a health authority as defined in the *Health Authorities Act*;**
- (b) profit, not-for-profit or government operated Department of Community Services funded organizations or representatives that are covered under the *Homes for Special Care Act* and the *Children and Family Services Act* including places of safety for children and youth, and customized placements for persons with disabilities;**
- (c) profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* or home care agencies funded under the *Homemaker Services Act*;**
- (d) persons providing care under the self-managed care program, supportive care program, caregiver benefit program funded by the province of Nova Scotia;**
- (e) persons providing support under the Independent Living Support, Supported Apartment and Supervised Apartment Programs funded by the Department of Community Services;**
- (f) homeless shelters receiving operational grants from the Department of Municipal Affairs and Housing, and those operated by religious and other voluntary organizations;**
- (g) unlicensed child-care facilities;**

(h) a place designated or established under the authority of the *Correctional Services Act* or the *Youth Criminal Justice Act (Canada)* for the supervision or custody of offenders and includes community-based correctional services;

(i) any administrative tribunal, arbitration proceeding or court operating essential services in the Province under the authority of any provincial or federal enactment, including but not limited to, a justice centre or courthouse under the authority of the *Judicature Act* or a provincial court under the authority of the *Provincial Court Act* or the *Family Court Act*;

(ia) notwithstanding clause (i), the Labour Board must still comply with section 13 when conducting a vote under the *Trade Union Act*.

(j) Emergency Medical Care Incorporated;

(k) persons providing, servicing or repairing medical equipment, such as wheelchairs, red cross beds/equipment, home oxygen equipment;

(l) private not-for-profit community transportation providers;

(m) food production plants; and

(n) fishing vessels.

16.1 Physical distancing requirements and the person limit set out in sections 13 and 13.1 do not apply to the following municipal entities and their contractors when carrying out their work duties:

(a) Police and Fire Services;

(b) Municipal Utilities such as water, wastewater and stormwater;

(c) Maintenance of utilities and municipal facilities;

(d) Transportation;

(e) Road maintenance/repair;

(f) Municipal ICT systems and services;

(g) Public Transit;

(h) Solid Waste, garbage and litter collection and disposal;

(i) Urban Forestry; and

(j) Municipal logistic, distribution, storage, inventory and repair services.

16.2 Physical distancing requirements and the person limit rule set out in sections 13 and 13.1 do not apply to the following provincial entities and their contractors when carrying out their work duties:

- (a) Transportation and Active Transit;
- (b) Infrastructure and Housing;
- (c) Road maintenance/repair;
- (d) Government building construction and/or repair; and
- (e) Enforcement or compliance officers authorized by their statutory appointments or delegated authority to inspect, investigate and/or enforce provincial legislation while carrying out their powers pursuant to the relevant statutory authority.

17. Gatherings for sleep over camps held by a recognized business or organization are cancelled for 2021 unless otherwise amended.

18. For the purpose of sections 18.2 -18.7, a “mask” means a commercial medical or non-medical mask or a home-made mask made as per the PHAC instructions located at: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/sew-no-sew-instructions-non-medical-masks-face-coverings.html>, that covers the nose and mouth.

18.1 For the purpose of section 18.2, a “public place” means the part of the following places accessible to the public,

insofar as it is enclosed:

- (a) a retail business, a shopping centre, or a building or room of a business where personal care services are provided;
- (b) a restaurant or a liquor licensed establishment, including the kitchen and preparatory space of a restaurant or a liquor licensed establishment;
- (c) a place of worship or faith gathering;
- (d) a place where activities or services of a cultural or entertainment nature are offered;
- (e) a place where sports are played, fitness, recreational or leisure activities are carried on;

the public;

(h) a common area, including an elevator, of a tourist accommodation establishment;

(i) a lobby, reception area or elevator in an office building;

(j) a common area or public space on a university or college campus;

(k) a train or bus station, a ferry terminal, or an airport;

(m) common areas of a multi-residential building;

(n) all common areas of private indoor workplaces;

(o) private indoor workplaces where there are:

(i) interactions with the public;

(ii) areas with poor ventilation; or

(iii) areas where physical distance as set out in section 13 cannot be maintained,

and insofar as it is outdoors:

(p) all serviced areas of a restaurant or a liquor licensed establishment, including their patios but excluding holes on the golf course that are licensed;

(q) organized outdoors gatherings such as public markets, special or temporary events where 2 metres (6 feet) physical distancing cannot be consistently maintained; and

(r) outdoors where physical distancing cannot be maintained such as playgrounds and parks.

18.2 All persons must wear a mask that covers their nose and mouth while present in a public place.

18.3 Notwithstanding section 18.2, a person is exempt from the requirement to wear a mask in a public place if the person:

- (a) is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;
- (b) for whom the wearing of a mask is not possible because of the person's medical condition;
- (c) is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*;
- (d) is in the public place receiving care or being provided a service or while participating in a physical or other activity requiring the mask be removed, in which case the person may remove the mask for the duration of the care, service or activity;
- (e) removes the mask momentarily for identification or ceremonial purposes;
- (f) is in a courtroom, jury room or secured area in a courthouse, or room where a proceeding or meeting of an administrative tribunal established by legislation is being held; or
- (g) is a performer at a virtual event or officiant in the course of performing activities requiring vocalization such as talking or singing at an event or activity as described in sections 15 or 15.1.

18.4 All persons must wear a mask that covers their nose and mouth as defined in section 18 while travelling on vehicles providing transportation to the public, including:

- (a) any municipally operated public transit, including municipally operated buses and ferries;
- (b) any public passenger vehicle licensed under the *Motor Carrier Act*, including community transit vehicles, commercial vehicles (shuttle vans), and vehicles providing charters and/or tours;
- (c) any school buses licensed under the *Motor Carrier Act* and any vehicles of any capacity operated by private schools recognized by the Minister of Education and Early Childhood Development;
- (d) commuter vehicles and courtesy vehicles as defined under the *Motor Carrier Act*, vans, mini-buses, or buses of any passenger capacity providing services to the public;
- (e) any vehicles serving residents and staff of facilities listed in section 20.1; and
- (f) taxicabs regulated by municipalities under the authority of the *Motor Vehicle Act*.

18.5 Notwithstanding section 18.4, the following persons are exempt from the requirement to wear a mask while travelling on vehicles providing transportation to the public:

(a) a person is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;

(b) a person for whom the wearing of a mask is not possible because of the person's medical condition; and

(c) a person who is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*.

18.6 A person may remove the mask momentarily for identification purposes when boarding any public transit set out in section 18.4.

18.7 For greater certainty, the requirement to wear a mask, as set in sections 18.2 and 18.4, is the minimum standard that persons and businesses must adhere to, and where the business's plan approved in accordance with section 26.1 of this Order imposes a greater standard, then that standard applies.

19. Effective 6:00a.m. June 3, 2021 all public schools located in Halifax Regional Municipality and the Sydney Academy and Riverview Families of Schools located in Cape Breton Regional Municipality are open.

19.1. Except those schools listed in section 19, effective 6:00a.m. June 2, 2021, all public schools under the jurisdiction of a regional centre for education or the Conseil Scolaire Acadien Provincial are open and all private schools may open at the direction of the private school.

19.2 Childcare facilities and family childcare homes regulated under the *Early Learning and Child Care Act*:

(a) may remain open; and

(b) directors, caregivers, staff, visitors and children over two years old must wear a mask as defined in section 18, unless subject to one of the exemptions as set out in section 18.3.

**PART III
LONG TERM CARE FACILITIES
AND
OTHER VULNERABLE POPULATIONS**

20. Effective 8:00a.m. June 2, 2021, except where otherwise stated in this Order, the restrictions on long term care facilities and other vulnerable populations apply to all persons present and residing in Nova Scotia.

20.1 Notwithstanding section 16(b) and (c) and subject to section 20.2, all for-profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* and all Adult Residential Centers and Regional Rehabilitation Centers funded and licensed by the Department of Community Services under the *Homes for Special Care Act* must comply with Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:
<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>;

20.2 All long term care facilities licenced by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act*, and all residents of such facilities must comply with the process for isolating COVID-19 positive long term care residents set out in Schedule "A", "COVID-19 Management Long Term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:
<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.3 All long term care facilities licensed by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are open to family for outdoor visits, specialized workers such as a hairstylist, and 2 designated caregivers, in accordance with the terms and conditions set out in Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at: <https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.4 All residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* not referred to in section 20.3 may have outside visitors so long as approved by the home in which they reside and comply with all general public health measures required under this Order.

20.5 Subject to 20.6, all residents in homes licensed by the Minister of Health and Wellness are not permitted to have community access, except residents of Residential Care Facilities who are permitted community access for work or school as approved by the facility in which they reside.

20.6 Notwithstanding section 20.5, all residents in homes licensed by the Minister of Health and Wellness under the *Homes for Special Care Act* may participate in drives by a designated caregiver or staff, but such outings must not include:

- (a) other passengers in the case of drives by a designated caregiver; or
- (b) stops or drive throughs.

20.7 All residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* are permitted to have community access as long as they comply with all general public health measures required under this Order.

20.8 For the purpose of section 20.9, “Adult Day Program” means a planned program of activities in a professional care setting designed for older adults who require supervised care during the day, or those who are isolated and lonely. Adult day care centers enable seniors to socialize and enjoy planned activities in a group setting, while still receiving needed health services. At the same time, they offer family caregivers respite from caregiving duties while knowing that their loved one is in a safe place.

20.9 All senior’s Adult Day Programs are closed, except for provision of respite care.

20.10 All Day Programs for persons with disabilities funded by the Department of Community Services are closed, except for scheduled vaccine clinics at these locations.

20.11 For greater clarity, nothing in this Order prevents the:

- (a) discharge of a COVID-19 patient from a hospital to a long-term care or residential care facility;
- (b) transfer of a COVID-19 patient from community to a long-term care or residential care facility; or
- (c) return of a COVID-19 patient who has left a long-term care or residential care facility for healthcare services back to that facility after receiving treatment at a hospital.

PART IV BUSINESSES, ORGANIZATIONS AND PROFESSIONS

21A Effective 8:00a.m. June 2, 2021, except where otherwise stated in this Order, the restrictions on businesses, organizations and professions apply to all established

businesses, organizations and professions carrying on business and operating in Nova Scotia.

21.1 The *Occupational Health and Safety Act*, 1996, c.7, s.1, is hereby incorporated by reference and must be followed by all employers, contractors, constructors, suppliers, owners and employees and each shall take every precaution that is reasonable in the circumstances to ensure the health and safety of all persons at or near a workplace.

22. All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may not carry out COVID-19 Point of Care Screening Tests (PCTs) unless the business or organization:

(a) has obtained prior approval from the Office of the Chief Medical Officer of Health; and

(b) complies with any direction issued by me, as Chief Medical Officer of Health.

23. Subject only to specific closures or limitations directed elsewhere in this Order, all not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may continue to operate but must implement physical distancing of 2 metres (6 feet) within all workplaces and meeting spaces, except where otherwise provided in this Order.

23.1 Any not-for-profit or for-profit business or organization carrying on business in Nova Scotia that cannot maintain the physical distancing requirements set out in section 13 of this Order must limit the number of customers or clients on its premises to no more than 10 persons at a time.

24. Restaurants and liquor licensed establishments are:

(a) restricted to providing food and alcohol take-out and delivery service only; and

(b) prohibited from offering in-person dining except to serve guests of the hotel within which a restaurant or licensed establishment is located.

24.1 For the purpose of sections 24.2(a) and (b), a "patio" shall:

(a) have no portion of the patio located within the exterior walls of a building;

(b) contain permanent openings in walls and/or roof totalling not less than 50% of the patio floor area; and

(c) have all seating on the patio located within 25 feet of an opening.

24.2 Notwithstanding section 24(b), restaurants and liquor licensed establishments may provide in-person patio dining (excluding buffets) while adhering to the following:

- (a) all restaurants may offer in-person patio dining provided the operator:**
 - (i) maintains a minimum physical distance of 2 metres (6 feet) or a physical barrier between tables, booths and single seats;**
 - (ii) no group of patrons shall have more than 10 persons at a table;**
 - (iii) ensures patrons remain seated at their table, except while waiting to be seated, going to the bathroom, and getting ready to leave;**
 - (iv) ensures patrons wear masks when not consuming food or alcohol consumption;**
 - (v) ensures staff (servers and kitchen) wear masks while carrying out their work duties;**
 - (vi) ceases in-person patio dining service to customers effective 11:00p.m.; and**
 - (vii) closes by midnight,**

and

(b) all liquor licensed establishments, including liquor manufacturers (as defined in the *Liquor Control Act*) may offer in-person patio dining provided the licensee:

- (i) ensures no group of patrons have more than 10 persons per table;**
- (ii) maintains a minimum physical distance of 2 metres (6 feet) or a physical barrier between tables, booths and single seats;**
- (iii) provides food and alcohol consumption only for in-seat service;**
- (iv) ensures food (excluding buffets) and alcohol is delivered to the table by staff;**
- (v) ensures food and alcohol remains at the table;**
- (vi) ensures patrons remain seated at their table, except while waiting to be seated, going to the bathroom, participating in a game/activity being held in the establishment and getting ready to leave;**

(vii) ensures patrons comply with the physical distancing requirements set out in section 13;

(viii) ensures patrons wear masks when not consuming food or alcohol consumption;

(ix) ensures staff (servers and kitchen) wear masks while carrying out their work duties;

(x) ceases in-person patio dining service to customers effective 11:00p.m.; and

(xi) closes by midnight.

24.3 Liquor boutiques, distilleries, breweries, and wineries:

(a) may remain open but must, at all times, limit the number of customers to a maximum of 25% of allowable occupancy or 120 square feet per person for retail purchase and sale for offsite consumption,

but

(b) are prohibited from offering in-person tastings, samplings or in-person dining, except in-person patio dining in accordance with section 24.2(a).

24.4 Restaurants, liquor licensed establishments, liquor boutiques, distilleries, breweries, and wineries offering in-person patio dining service must:

(a) collect and maintain records of each patron contact information that includes the following minimum data:

(i) name(s);

(ii) contact telephone number;

(iii) date; and

(iv) time,

that the patron was at the restaurant or liquor licensed establishment;

(b) retain information collected under section 24.1 for a period of 30 calendar days and destroy it on the following day immediately thereafter;

(c) provide the information collected under section 24.1 to the Chief Medical Officer of Health or his delegate in electronic form; and

(d) only use the information collected under section 24.1 for the purpose of provision to the Chief Medical Officer of Health in compliance with this Order and may not use it for any other purpose.

24.5 Liquor licensed establishments and non-liquor licensed establishments, including community centres, charities or organized clubs, are prohibited from hosting patrons for activities such as darts, pool, bingo or bowling.

25. Regulated and unregulated health professions practicing may continue to practice and provide services within their scope of practice if they have a Workplace COVID-19 Prevention Plan that has been approved by the Chief Medical Officer of Health.

26. All not for-profit, for-profit businesses, organizations and professions named in Part IV of this Order shall, as a requirement of their ongoing operations, develop and comply with a Workplace COVID-19 Prevention Plan, as amended from time to time.

26.1 In addition to the physical distancing requirements and person limit rule set out in sections 13 and 23.1, the Workplace COVID-19 Prevention Plan required by section 26 shall address the following:

- (a) how to work and interact with customers or clients;
- (b) physical distancing in the workplace;
- (c) cleaning;
- (d) equipment;
- (e) preparing employees to return to work;
- (f) preparing for customers or clients; and
- (g) monitoring and communicating of plan,

and may be substantially similar to those proposals listed in Schedule “B”, located at: <https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf> for similar businesses or health professionals and must be made available for review by the Chief Medical Officer of Health.

26.2 All businesses or regulated health professionals that are a member of an association listed in Schedule “B” must adopt as their Workplace COVID-19 Prevention Plan the proposal submitted by their association and must be made available for review by the Chief Medical Officer of Health.

26.3 For greater certainty, in the case of conflict between a Workplace COVID-19 Prevention Plan and this Order, the more stringent provision applies.

26.4 Effective 8:00a.m. June 1, 2021, all Provincial Park campgrounds may open.

26.5 All privately operated campgrounds may open and must operate in accordance with the terms and conditions as approved by the Chief Medical Office of Health referenced in Schedule "B" located at:
<https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf>.

27. Casino Nova Scotia (Halifax and Sydney locations) and Video Lottery Terminals are closed.

28. Subject to 28.2 and 28.3, all not-for-profit and for-profit fitness facilities such as gyms and yoga studios, sport and recreational facilities such as indoor pools, arenas, tennis courts, and large multipurpose recreation facilities:

(a) are closed to patrons,

but may open

(b) to offer personal training indoors on a one to one person ratio for instructor and participant, or multiple groups of a one to one ratio for instructor and participant while ensuring 2 metres (6 feet) physical distance between participants;

(c) to offer virtual classes; and

(d) outdoor pools up to a maximum of 10 persons, ensuring 2 metres (6 feet) physical distance between participants; and

(e) to perform administrative and operational functions.

28.1 Businesses and organizations that offer indoor recreation and leisure activities such as indoor play areas, arcades, climbing facilities, dance classes and music lessons are closed.

28.2 All not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may offer outdoor fitness classes and other recreational activities up to a maximum capacity of 10 persons if held off their premises, or multiple groups of 10 each on their premises, while ensuring 2 metres (6 feet) physical distance between participants.

28.3 Notwithstanding section 28.1, all not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may host lessons for recreational activities, provided that:

(a) lessons are held on a one to one person ratio for instructor and participant;
and

(b) the instructor and participant:

(i) wear a mask; and

(ii) maintain physical distancing requirements of 2 meters (6 feet) during the lesson.

29. All personal service establishments such as hair salons, barber shops, spas, nail salons and body art establishments may open for provision of personal services by appointment only but are prohibited providing services that require a patron to remove their mask as defined in section 18.

30. The Art Gallery of Nova Scotia and all museums and public libraries are closed, but libraries may offer curbside pickup and drop-off of books and other materials.

31. For the purpose of sections 31.1 to 31.2, "retail business" means a business operating on an ongoing basis at a fixed location primarily selling goods or products for use or consumption by individual purchasers.

31.1 A retail business that engages in the retail sale, or rental, of items to the public shall comply with the following conditions:

(a) the number of persons occupying any retail space that is open to the public in the business does not exceed 25 per cent of the allowable occupancy or 120 square feet per person of the particular retail space;

(b) in accordance with section 13, members of the public must be able to maintain a physical distance of at least 2 metres (6 feet) from every other person in the place of business, except those persons residing in the same household;

(c) no patrons may be permitted to line up inside or line up or congregate outside of the establishment unless they are,

(i) maintaining a physical distance of at least 2 metres (6 feet) from other persons inside or outside the establishment, and

(ii) wearing a mask or face covering in a manner that covers their nose and mouth, unless they are entitled to any of the exceptions set out in section 18.3; and

(d) the person responsible for the place of business must ensure that music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db.

31.2 Shopping malls shall comply with the following conditions:

(a) in accordance with section 13, members of the public must be able to maintain a physical distance of at least 2 metres (6 feet) from every other person in the shopping mall, except those persons residing in the same household;

(b) no patrons may be permitted to line up inside or line up or congregate outside of the shopping mall unless they are,

(i) maintaining a physical distance of at least 2 metres (6 feet) from other groups of persons inside or outside the shopping mall, and

(ii) wearing a mask or face covering in a manner that covers their mouth, nose and chin, unless they are entitled to any of the exceptions set out in section 18.3;

(c) no line up outside any one retail space located inside the shopping mall shall exceed 10 persons;

(d) the person responsible for the shopping mall must ensure that:

(i) music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db;

(ii) patrons are not permitted to loiter in any area of the shopping mall; and

(iii) directional markings are provided to manage the flow of pedestrians within the mall,

(e) the non-retail public areas in the mall shall be closed other than for traffic flow/store access and washroom access;

(f) notwithstanding clause 31.2(e), food courts are open to the public but:

(i) food court vendors may provide take out food services;

(ii) tables in food courts may only be used by persons who work in the mall or the public;

(iii) a minimum of 2 metres (6 feet) is maintained between patrons seated at food court tables and between other patrons in the food court; and

(iv) patrons must wear a mask as defined in section 18 except when consuming food or beverage.

**PART V
EXCEPTIONS**

32. Under exceptional circumstances and under the authority granted to me as the Chief Medical Officer of Health under Part I of the *Health Protection Act*, I may exercise discretion to grant an exception to any term and condition of this Order.

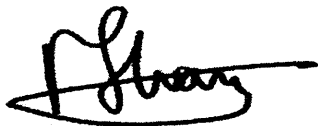
**PART VI
PENALTIES**

33. Any direction provided by a medical officer of health to a person, business, organization or other entity pertaining to COVID-19 and the terms and conditions of this Order must be followed.

34. Failure to comply with this health protection order may be considered a breach of this Order issued under the *Health Protection Act* and may result in penalties under the Act.

This Order remains in effect until notice is provided by myself, as Chief Medical Officer of Health, under the authority granted under Part I of the *Health Protection Act* and will be updated from time to time.

Signed:

A handwritten signature in black ink, appearing to read 'R. Strang', is written over a horizontal line. A vertical line is drawn to the right of the signature.

Dr. Robert Strang
Chief Medical Officer of Health
Nova Scotia Department of Health and Wellness

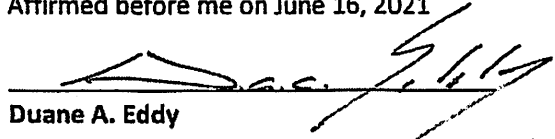
cc The Honourable Iain Rankin, Premier of Nova Scotia
The Honourable Zach Churchill, Minister of Health and Wellness
Laura Lee Langley, Deputy to the Premier and Clerk of Executive Council
Dr. Kevin Orrell, Deputy Minister of Health and Wellness
Dr. Shelley Deeks, Deputy Chief Medical Officer of Health
Tina M. Hall, Legal Counsel, Nova Scotia Dept. of Justice

TAB C

2021

Hfx No. 506040

This is Exhibit "C" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021



Duane A. Eddy

A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

2021

OF NOVA SCOTIA
MAY 14 2021
HALIFAX, N.S.

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

and

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

Respondents

INJUNCTION ORDER

Sgd.
SCN, J

BEFORE THE HONOURABLE JUSTICE SCOTT NORTON IN CHAMBERS:

WHEREAS a Notice of Application in Chambers (*ex parte*) for a *quia timet* injunction was filed by the Attorney General of Nova Scotia on May 12, 2021, pursuant to the *Health Protection Act* 2004, c. 4, s. 1;

AND WHEREAS a hearing was held in respect of that application on May 14, 2021, with Duane Eddy representing the Attorney General of Nova Scotia;

AND UPON reviewing the materials filed herein;

AND UPON reviewing the affidavit of Dr. Robert Strang, Chief Medical Officer of Health, and the affidavit of Hayley Crichton;

AND UPON hearing submissions of counsel for the Attorney General of Nova Scotia;

IT IS ORDERED THAT:

1. The application is granted without costs to any party.
2. For the purpose of this Order an "Illegal Public Gathering" has the same meaning and definition as set out in the Public Health Order titled "Restated Order #2 of the Chief Medical Officer of Health Under Section 32 of the *Health Protection Act*, 2004, c.4, s.1" dated May 13, 2021, issued by Dr. Robert Strang.
3. The Respondent and any other person acting under their instruction or in concert with the Respondent or independently to like effect and with Notice of this Order, shall be restrained anywhere in the Province of Nova Scotia from :

- a. organizing an in person gathering, including requesting, inciting, or inviting others to attend an "Illegal Public Gathering";
- b. promoting an Illegal Public Gathering via social media or otherwise;
- c. attending an Illegal Public Gathering of any nature whether indoors or outdoors as set out in the Public Health Orders, as amended, and issued by Dr. Robert Strang, Chief Medical Officer of Health, under section 32 of the *Health Protection Act*.

4. Any member of any Police Service, as defined in the *Police Act* 2004, c. 31, s. 1, or any peace officer as defined in the *Criminal Code*, RSC 1985, c C-46 (collectively, "Law Enforcement"), is authorized to use reasonable force in arresting and removing any person who has notice of this Order and whom Law Enforcement has reasonable and probable grounds to believe is contravening this Order. Upon arresting any person pursuant to this Order, Law Enforcement may detain such person until they may be dealt with in accordance with this Order.

5. Any member of Law Enforcement who arrests, detains, or removes any person pursuant to this Order (hereinafter, the "Offending Party"), is authorized to:

- a. bring the Offending Party, as soon as possible, before a Justice of the Supreme Court of Nova Scotia, and the Offending Party will be required to show any reason why there should be no finding of Civil Contempt at a hearing before a Justice of the Supreme Court of Nova Scotia;
- b. issue a summons that requires the Offending Party to appear before a Justice of the Supreme Court of Nova Scotia, as soon as possible, and the Offending Party will be required to show any reason why there should be no finding of Civil Contempt at a hearing before a Justice of the Supreme Court of Nova Scotia; or
- c. release the Offending Party from arrest upon that person agreeing in writing to undertake to both:
 - i. appear in person before a Justice of the Supreme Court of Nova Scotia at such time and place as may be fixed for the purpose of being proceeded against for contempt of court, or for fixing a date for such a proceeding; and
 - ii. obey the Public Health Order issued by the Chief Medical Officer of Health, dated May 13, 2021, as amended.
- d. detain such person in custody until such time as it is possible to bring that person before this Court.

6. Service of the Order shall be made upon the individual named Respondents via posting copies of the Order to their respective email addresses and on-line social media accounts. In addition, a copy of this Order shall be posted as is possible on all social media platforms associated with the Respondent Freedom Nova Scotia and Worldwide Rally for Freedom and Democracy. A person shall be deemed to have Notice of this Order upon the Order being published on the Government of Nova Scotia's COVID-19 internet website: <https://novascotia.ca/coronavirus/>, the Order is published in a public forum by the Government of Nova Scotia, or if it is read to them.

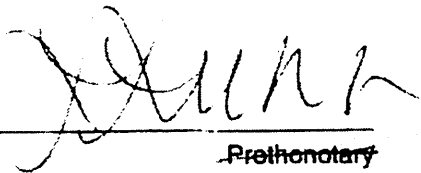
7. The provisions of this Order are additional to and do not limit, exclude, or derogate from:

- a. any powers of Law Enforcement, including but not limited to their powers under the *Criminal Code* and/or applicable provincial legislation; and
- b. any powers under the *Health Protection Act* and Public Health Orders issued under the *Health Protection Act*.

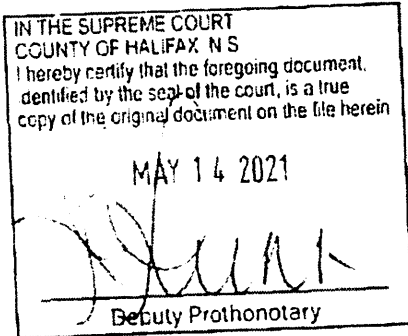
8. This Order shall remain in force until varied or discharged by a further Order of the Court.

9. The Respondents and 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 process provided in the *Civil Procedure Rules* but no such motion shall in any way excuse that person from compliance with the terms of this Order.

Issued at Halifax, Nova Scotia on MAY 14, 2021.


Prothonotary

LORRAINE LUNN
Deputy Prothonotary



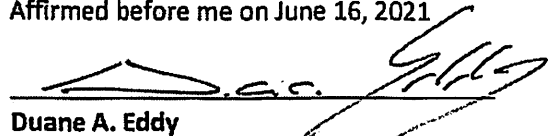
LORRAINE LUNN
Deputy Prothonotary

TAB D

2021

Hfx No. 506040

This is Exhibit "D" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021

A handwritten signature in black ink, appearing to read 'D.A. Eddy', is written over a horizontal line.

Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia.

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia



Situation Report

File Number
GO#2021-61012

(2021-101) SITREP to AG - Large Illegal Gathering (PHA Offences), Cole Harbour, NS

PURPOSE:

- To update the Attorney General of an illegal gathering and summary offence tickets (SOTS) issued under the Public Health Act.

BACKGROUND:

- On May 23, 2021, Cole Harbour RCMP responded to a report of a large house party at a residence in Cole Harbour.,
- Upon arrival, loud music was heard coming from the home and a disco ball could be seen from a distance.
- RCMP members were refused entry into the home and the music and lights were turned off.
- Seventeen vehicles were located at the property.
- Members queried all license plates, two vehicles were registered to the residence and the remaining were registered to owners residing within, and outside of Halifax Regional Municipality.
- Members conducted conducted traffic stops throughout the night on vehicles leaving the property.

CURRENT STATUS:

- Nine SOTS have been issued to date, totaling \$21,798.00.
- A Summary Offence Ticket will be issued to the home owner.
- The investigation continues to identify the remaining persons in attendance.

STRATEGIC CONSIDERATIONS:

- None at this time.

STRATEGIC COMMUNICATIONS:

- "H" Division Strategic Communications is engaged.

RECOMMENDATIONS

- Nil.

SITREP #2021-101

Signatures

Submitted by S/Sgt. Michael Balmaceda	Signature 	Date Submitted (yyyy-mm-dd) MAY 25 2021
Recommended by Insp. Sean Auld	Signature 	Date Recommended (yyyy-mm-dd) 2021-05-26
Approved by C/Supt. Chris Leather	Signature 	Date Approved (yyyy-mm-dd) MAY 26 2021
Reviewed by	Signature	Date Reviewed (yyyy-mm-dd)

TAB E

2021

Hfx No. 506040

This is Exhibit "E" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021



Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia



Situation Report

(2021-093) SITREP to AG - Update - HPA Tickets Issued - [REDACTED], Nova Scotia

PURPOSE:

- To update the Attorney General of a number of Summary Office Tickets issued under the Health Protection Act (HPA) in relation to a religious gathering.

BACKGROUND:

- On May 2, 2021, Kingston RCMP received several calls about a large gathering taking place at a church in [REDACTED], Nova Scotia.
- RCMP members attended, explained the HPA. Clients on site refused to disperse, a formal warning was issued to the church.
- On May 9, 2021, Kingston RCMP received several calls about a large gathering taking place at the same church in [REDACTED]. RCMP members attended, explained the HPA and advised all to disperse. Clients on site refused to disperse, 26 Summary Offence Tickets were issued under the HPA.
- On May 15, 2021, the leader of the church was contacted by Kingston RCMP and was warned that a gathering at the church would result in enforcement action.
- On May 16, 2021, Kingston RCMP attended the church, a service was in progress.

CURRENT STATUS:

- Police remained on scene until the end of the service.
- 7 Summary Offence Tickets were issued to clients under the HPA.
- 1 Summary Offence Ticket was issued to the church.
- The clients of the church indicated that they are planning on returning the following Sunday.

STRATEGIC CONSIDERATIONS:

- The Officer in Charge of Southwest Nova District is aware.
- The Officer in Charge of Criminal Operations is aware.

STRATEGIC COMMUNICATIONS:

- "H" Division Strategic Communication Section is engaged.

RECOMMENDATIONS:

- NIL

SITREP #: 2021-093

Signatures

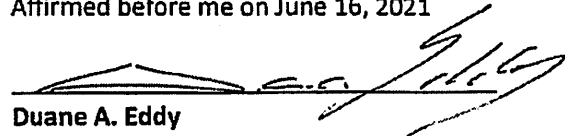
Submitted by S/Sgt. Michael Balmaceda	Signature 	Date Submitted (yyyy-mm-dd) 2021-05-17
Recommended by Insp. Sean Auld	Signature 	Date Recommended (yyyy-mm-dd) 2020 0518
Approved by C/Supt. Chris Leather	Signature 	Date Approved (yyyy-mm-dd) MAY 18 2021
Reviewed by	Signature	Date Reviewed (yyyy-mm-dd)

TAB F

2021

Hfx No. 506040

This is Exhibit "F" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021



Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

DUANE A. C. EDDY
A Barrister of the Supreme
Court of Nova Scotia

COVID-19 Response May 15

Background:

On Saturday, May 15, 2021, two events took place in Halifax involving various COVID-19 fractions, at which Halifax Regional Police officers used enforcement actions, including summary offence tickets and arrests.

HRP had reached out to the organizers of both events in advance to make them aware of the current public health restrictions, including, a recent court order issued on Friday. The events proceeded anyway.

Detailed overview:

May 15, 2021

- 1) Anti-mask Freedom Rally - Anti-mask Freedom Rally - scheduled from 1300-1500 hours on Citadel Hill. Court injunction led to organizers of this event announcing cancellation of same via social media, however attendees still arrived to partake, in violation of court order, Health Protection and Emergency Management Acts. Arrests and summary offence tickets issued. Approximately 50 people in attendance**

Enforcement stats:

- **Health Protection Act (HPA): 9** in total (Five of the nine people that were issued SOTs had to be arrested before they would provide identification).
- **Emergency Management Act (EMA): 2**
- **Arrest: 5** in total, no criminal charges and all released with SOT as stated above
- **File under Investigation: one** ran away and has yet to be identified

- 2) Palestine Freedom Rally - scheduled from 1300-1500 hours at Saint Mary's University parking lot on Inglis Street/Tower Road. Initially only 20 vehicles involved, however event escalated to more than 200 vehicles involved with over 500 people, causing multiple violations under the Health Protection, Emergency Management and Motor Vehicle Acts. Arrests and summary offence tickets issued. Central members tied up for several hours, clearing out the backlog of traffic.**

Enforcement stats:

- **Health Protection Act (HPA): 9**
- **Emergency Management Act (EMA): 2**
- **MVA: 6**
- **Arrest: 1** (One male arrested then released with no criminal charges but was issued 4 SOTS).

Strategic Communications:

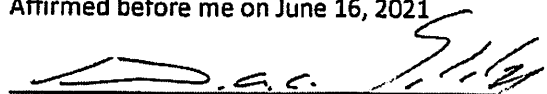
- Three news releases were issued following the events, as information became available.
- Social media posts were completed in conjunction with the news release.

TAB G

2021

Hfx No. 506040

This is Exhibit "G" referred to
In the Affidavit of Hayley Crichton
Affirmed before me on June 16, 2021

A handwritten signature in black ink, appearing to read "D.A. Eddy", written over a horizontal line.

Duane A. Eddy
A Barrister of the Supreme Court of Nova Scotia

**RESTATED ORDER #2 OF THE CHIEF MEDICAL OFFICER OF HEALTH UNDER
SECTION 32 of the *HEALTH PROTECTION ACT* 2004, c. 4, s. 1.**

May 13 2021

Update Log:

May 13, 2021: Sections 2-2.3, 3.2, 7-7.1, 13A, 13.2, 20 and 21A (amended) and 13.5-13.6 (new)

May 8, 2021: Sections 2-2.3, 3.1-3.2, 4-4.2, 10, 11, 12.1, 12.3-12.4, 13A, 19-19.2, 20, 21A, 22 and 31.1 (amened), and Sections 13.4 and 31.1.2 (new)

May 4, 3021: Sections 2.2, 28.2 and 31.1 (amended), and Section 13.3 (new)

April 29, 2021: Sections 24.3 and 31.2 (amended) and Section 31.2.1 (new)

- TO:**
- 1.) All persons residing in or present in the Province of Nova Scotia;**
 - 2.) All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia;**
 - 3.) Such other persons or entities as may be identified by the Chief Medical Officer of Health or otherwise as set out in this Order.**

ORDER made pursuant to Section 32 of the *Health Protection Act* (Nova Scotia)

AND WHEREAS Section 32 of the *Health Protection Act* states:

32 (1) Where a medical officer is of the opinion, upon reasonable and probable grounds, that:

- (a) a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary in order to decrease or eliminate the risk to the public health presented by the communicable disease.

the medical officer may by written order require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

WHEREAS COVID-19 has been identified as a communicable disease that presents a risk to public health as defined under s.4(b) of the *Health Protection Act*, and;

WHEREAS I am the Chief Medical Officer of Health for the Province of Nova Scotia and am of the opinion, upon reasonable and probable grounds, that

- (a) a communicable disease (COVID-19) exists; and that there is an immediate risk of an outbreak of the communicable disease;
- (b) the communicable disease presents a risk to the public health; and
- (c) the requirements specified in the order are necessary to decrease or eliminate the risk to the public health presented by the communicable disease, and;

WHEREAS as the Chief Medical Officer of Health, I have determined it necessary to issue this Order to the Class of Persons to decrease the risk to public health presented by COVID-19.

Please be advised that:

I, Dr. Robert Strang, Chief Medical Officer of Health, **order** the following:

PART I ENTRY, ISOLATION AND QUARANTINE REQUIREMENTS

1. In this Order,

- (a) “self-isolate” means the requirement of any person who has COVID-19 to remain separate from others in such places and under such conditions to prevent or limit the direct or indirect transmission of COVID-19; and
- (b) “self-quarantine” means the requirement of any person who has been exposed or may have been exposed to COVID-19 during its period of communicability to restrict that person’s activities in order to prevent disease transmission during the incubation period for this disease.

2. Effective 8:00a.m. May 14, 2021, all persons are prohibited from entering Nova Scotia, except as stated herein or set out elsewhere in this Order:

- (a) permanent residents of Nova Scotia and their spouses, partners and dependant children when travelling together;
- (b) persons who have engaged in essential travel outside Nova Scotia; or
- (c) spouses, partners and dependant children of the following persons engaged in essential travel, when travelling together with that person:

- (i) students coming to study in Nova Scotia;
- (ii) essential health care workers;
- (iii) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service; and
- (iv) a person who has been granted an exception in accordance with section 32.

2.1 Where any person travels into Nova Scotia in contravention of this Order, a peace officer is hereby authorized and directed to return that person to an interprovincial border and require the person to leave the Province immediately or at such a time as may be directed, and in doing so, may exercise authority under section 46 of the *Health Protection Act*.

2.2 For the purpose of section 2(b), persons engaged in essential travel means:

- (a) a resident of Nova Scotia whose primary employment is in another province;
- (b) a person required to participate in-person in a legal proceeding in another province;
- (c) students coming to study in Nova Scotia, or returning to their primary or family residence in Nova Scotia after studying outside Nova Scotia;
- (d) a party to a child sharing arrangement that requires entry into or exit from Nova Scotia;
- (e) a temporary foreign worker as set out in sections 7 to 7.1, a rotational worker as set out in sections 9 to 9.1, a specialized worker as set out in section 10, and a fish harvester as set out in section 11;
- (f) essential health care workers;
- (g) a person exempt from self-isolation following the exempt traveler protocol;
- (h) a person traveling between Nova Scotia and New Brunswick for work, school and child care only, while following the Nova Scotia-New Brunswick protocol;
- (i) a person required to travel to Nova Scotia for essential health services, with accompanying support persons; or
- (j) a person who has been granted an exception in accordance with section 32.

2.3 Effective 8:00a.m. May 14, 2021, all persons seeking entry into Nova Scotia must apply through the Nova Scotia Safe Check-in form and complete daily digital check-ins, located at: <https://travel-declaration.novascotia.ca/en>, except:

- (a) persons following the Nova Scotia-New Brunswick protocol;**
- (b) professional truck drivers; and**
- (c) persons who have received compassionate exceptions.**

3.1 The requirements of section 3.2 apply to all persons residing in or present in the Province of Nova Scotia who:

- (a) have travelled outside Nova Scotia or reside in the same household of a person who has travelled outside Nova Scotia; or**
- (b) are identified as a close contact of a person who has or has been diagnosed with COVID-19; or**
- (c) are identified as a person diagnosed with COVID-19; or**
- (d) have been tested for COVID-19 due to the presence of symptoms or as directed by public health and are awaiting the results of their test.**

3.2 Effective 8:00a.m. May 14, 2021, those persons listed in section 3.1 must:

- (a) self-quarantine or self-isolate, for:**
 - (i) the period commencing on the day of entry into Nova Scotia, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health, or**
 - (ii) the first day of close contact, or first day of symptoms, testing, diagnosis, and continuing thereafter for 14 consecutive days or as directed by a Medical Officer of Health.**
- (b) During the 14-day period, conduct themselves in such a manner as not to in any way expose any other person to infection or potential infection from COVID-19, and follow all infection control instructions given to them on the Government of Nova Scotia's website, at: <https://novascotia.ca/coronavirus/>, or given to them by Telehealth 811 staff, public health staff or any other staff of a healthcare facility to which they may seek or receive treatment.**
- (c) After the 14-day period in section 3.2(a.) has lapsed, they may cease self-isolation or self-quarantine if they do not exhibit symptoms of COVID-19.**

3.3 All persons are encouraged to complete the online assessment tool should they exhibit symptoms of COVID-19.

3.4 For greater certainty, persons required to self-isolate or self-quarantine in accordance with section 3.2 must remain in their residence or residence grounds and otherwise remove themselves from the presence of others in public while they may be infectious during the 14-day period, so that all precautions necessary to protect others are in place. Specifically, such persons must not enter any buildings, public transportation, or other enclosed spaces (other than their residence) where other people are present.

3.5 Notwithstanding section 3.2(a):

(a) persons who receive a negative COVID-19 test result after being referred for testing by the online assessment tool due to the presence of COVID-like symptoms may cease self-quarantine on the date of receipt of the negative test result.

(b) persons who are required to self-isolate or self-quarantine may leave their residence:

**(i) to undergo COVID-19 testing as directed by a Medical Officer of Health;
or**

(ii) for 1 outing per day for outdoor exercise within walking/running distance of their home or isolation site for a maximum of 1 hour.

4. Notwithstanding section 3.1(a), persons who reside in the same household as a person who has travelled into Nova Scotia or is returning to Nova Scotia from any geographic location outside Nova Scotia for essential travel, are not required to self-quarantine if the traveller, during their 14-day period of self-quarantine, meets all of the following criteria:

4.1 For essential travel set out in subsections 2.2, the traveller:

(a) stays at their place of residence;

(b) has their own separate room in the home (e.g. separate bedroom, basement or attic);

(c) sanitizes their hands before leaving the separate room;

(d) wears a non-medical mask when outside of their separate room;

(e) avoids being in the same space as other household members;

(f) has their own bathroom or if sharing a bathroom then cleans high touch surfaces (e.g. doorknob, tap, toilet handle, sink, etc.) after each use;

- (g) has food and beverages prepared by others and accesses them in a non-contact manner;
- (h) does not share dishes, drinking glasses, cups, eating utensils, towels, bedding or other items with others in the home;
- (i) keeps their personal items (e.g. toothbrush, cups, cell phones, tablets, laptops, etc.) separate from those belonging to others; and
- (j) does not share food, drinks or cigarettes or any other items that are put in the mouth.

4.2 For greater clarity, a person who travels to Nova Scotia from any geographic location outside Nova Scotia for non-essential travel must self-quarantine in accordance with section 3.2.

5. Notwithstanding sections 2 and 3.1, persons who are well and showing no symptoms of COVID-19 may enter Nova Scotia for the purposes of facilitating child sharing between parents under an order or agreement providing for joint custody, and in such instances, both the persons facilitating custody and children showing no symptoms of COVID-19 are exempt from the requirement to self-quarantine.

5.1 Further to section 5, parents and children entering or leaving Nova Scotia for the purposes of facilitating child sharing arrangements must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>.

6. Notwithstanding sections 2 and 3.1, individuals who are well and showing no symptoms of COVID-19 and are engaged in a legal proceeding in Nova Scotia, whether the accused, victim, witness, party or lawyer in such proceeding, may enter Nova Scotia for participation in the legal proceeding and are exempt from self-quarantine if the person adheres to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

7. An employer or contractor of any Temporary Foreign Worker entitled to enter Nova Scotia pursuant to the Federal Order in Council 2021-0077, as amended, must first, before the Temporary Foreign Worker enters Nova Scotia, satisfy me, as Chief Medical Officer of Health, that the employer or contractor has made adequate provision for compliance with:

- (a) the federal quarantine rules applicable to the Temporary Foreign Workers in the Agriculture and Seafood Sector; and
- (b) the self-quarantine requirements set out in section 3.2 of this Order.

7.1 In addition, the employer or contractor and the Temporary Foreign Worker must, for the duration of the entire work period in Nova Scotia:

(a) adhere to all applicable terms and conditions of this Order; and

(b) adhere to the COVID-19 Protocol for Temporary Foreign Workers employed in Agriculture and Seafood Sectors established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-temporary-foreign-workers-agriculture-and-seafood-sectors-en.pdf>.

(c) comply with any direction issued by me, as Chief Medical Officer of Health, or a Medical Officer of Health with respect to the Temporary Foreign Worker and their employment in Nova Scotia.

8. Notwithstanding sections 2 and 3.1, persons who are required to travel to Nova Scotia or outside Nova Scotia for essential health services, with accompanying support persons as permitted by health authority policy, are exempt from the requirement to self-quarantine but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

9. For the purpose of section 9.1, “rotational worker” means a person who lives in Nova Scotia and travels to work in another province or territory in Canada on a regular schedule or travels outside Canada on a regular schedule and is exempt from self-quarantine under the federal *Quarantine Act*.

9.1 Notwithstanding sections 2 and 3.1, rotational workers must adhere to the self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at: <https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Rotational-Workers.pdf>.

10. Notwithstanding sections 2 and 3.1, specialized workers required to enter Nova Scotia from any geographic location outside Nova Scotia to perform urgent critical infrastructure work that cannot be done by individuals from within any of these provinces must adhere to self-quarantine and COVID-19 testing requirements established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Directive-on-Exceptions-for-Specialized-Workers.pdf>.

11. Notwithstanding sections 2 and 3.1, fish harvesters required to enter Nova Scotia from any geographic location outside Nova Scotia to perform the commercial or licensed activity of catching fish and other seafood for market or other approved activities, excluding recreational fishing, must adhere to self-quarantine requirements established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-fish-harvesters-en.pdf>.

12.1 Notwithstanding section 3.1, workers who are essential to the movement of people and goods, and who must enter Nova Scotia as part of their duty requirements, are exempt from the requirement to self-quarantine, particularly:

(a) healthy workers in the trade and transportation sector who are employed in the movement of goods and people across the Nova Scotia border by land, air, or water, including truck drivers, crew, maintenance and operational workers on any plane, train or ship;

(b) Canadian Military and Defence Team personnel, Coast Guard, RCMP, Canadian Border Services Agency, and Canadian Security Intelligence Service; and

(c) first responders, including police, fire, EHS paramedic workers, and essential healthcare workers.

but must adhere to the COVID-19 Protocol for Exempt Travelers established by the Chief Medical Officer of Health, located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-exempt-travellers-en.pdf>.

12.2 For greater clarity, airline crew employed in the movement of people and goods and who are required to travel to Nova Scotia or from Nova Scotia to carry out their work duties are exempt from the self-quarantine requirements set out in section 3.2.

12.3 Notwithstanding section 3.1, persons who reside in Nova Scotia or New Brunswick and are required to cross the Nova Scotia land border on a regular ongoing basis to work, attend a school or post-secondary institution, or access child care located in Nova Scotia or New Brunswick are exempt from the requirement to self-quarantine if that person follows the travel protocol at: <https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-Nova-Scotia-New-Brunswick.pdf>.

12.4 Persons exempt under sections 12.1 to 12.3 must practice physical distancing of 2 metres (6 feet) to the best of their ability, follow all public health recommendations, closely self-monitor and must self-isolate or self-quarantine should they exhibit any COVID-19 symptoms as set out in the online assessment tool.

PART II PHYSICAL DISTANCING, GATHERING LIMITS, MASKS AND FACE COVERINGS

13A Effective 8:00a.m. May 14, 2021, except where otherwise stated in this Order the requirements for physical distancing, gathering limits, masks and face coverings apply to all persons present and residing in Nova Scotia.

13. All persons present and residing in Nova Scotia must maintain physical distancing of 2 metres (6 feet).

13.1 All persons present and residing in Nova Scotia must not participate in any gatherings, whether indoors or outdoors, unless subject to a specific exception set out in this Order.

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing same the household, and are not required to practice physical distancing and masking; and

(b) where the number of persons living in the same household is 2 persons or less, they may gather together with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing and masking.

13.3 Notwithstanding section 13.1, persons from one household may gather outdoors with persons from another household to engage in an outdoor activity such as a walk or play but must adhere to the physical distancing requirements of section 13.

13.4 Notwithstanding sections 13.1 and 13.2 and for greater certainty, parties to a child sharing arrangement, or an order or agreement providing for joint custody:

(a) may facilitate and participate in such child sharing or custody arrangement between households,

but

**(b) must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health, located at:
<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custody.pdf>
if a parent or child develops symptoms or tests positive for COVID-19.**

13.5 For the purpose of section 13.6, an “illegal public gathering” is defined as a gathering that does not comply with the requirements of this Order, including:

(a) the attendance limits applicable to gatherings, whether indoors or outdoors;

(b) physical distancing requirements; and

(c) masking requirements.

13.6 For greater certainty, persons are prohibited from:

(a) organizing an in-person gathering, including requesting, inciting, or inviting others to attend an illegal public gathering;

(b) promoting an illegal public gathering via social media or otherwise; or

(c) attending an illegal public gathering of any nature, whether indoors or outdoors.

14. Notwithstanding section 13.1, persons may engage in outdoor physical activity while adhering to the gathering limitations set out in section 13.2 or the gathering limitations while participating in an outdoor fitness class and other recreational or leisure activities as set out in section 28.2, and in doing so, must adhere to physical distancing requirements of 2 metres (6 feet) as set out in section 13.

15. Persons may engage in, and business and organizations may host the following events and activities in-person, whether indoors or outdoors:

(a) weddings; or

(b) funerals,

while adhering to the following:

(a) a maximum of 5 persons, plus the officiant; and

(b) all persons in attendance must practice physical distancing, except persons residing in the same household as set out in section 13.2(a) or additional persons as set out in section 13.2(b).

15.1 Persons may not engage in, and persons, business and organizations may not host the following events and activities in-person:

(a) social events;

(b) arts and culture events;

(c) sports, recreation and physical activity events;

(d) special events;

(e) festivals;

(f) faith gatherings;

(g) wedding receptions; or

(h) funeral visitation or receptions,

but may host these events virtually while adhering to a maximum of 5 persons in one location to support the delivery of the event and complying with the physical distancing requirements set out in section 13.

15.2 Any person, business or organization that hosts an event authorized by sections 15 or 15.1 is responsible for maintaining oversight of the gathering and for ensuring that all persons in attendance comply with the requirements of this Order.

15.3 No person may engage in and no person, business or organization may host:

- (a) organized sport practice, training, games, competitions, or tournaments (recreational, amateur, and professional), or**
- (b) organized arts and culture rehearsals or in-person performances.**

15.4 No person, business or organization may host a formal in-person meeting or training.

15.4.1 Notwithstanding section 15.4, a business or organization may host a mental health and addictions support group meeting while adhering to the following:

- (a) a maximum of 10 persons in attendance; and**
- (b) all persons in attendance must adhere to masking and physical distancing requirements of 2 metres (6 feet) set out in this Order.**

15.4.2 Notwithstanding section 15.4, a business or organization may carry out meetings and training that are required for safety and essential operation.

16. For greater clarity, physical distancing and the person limit rule set out in sections 13 and 13.1 do not apply to the following organizations, activities, persons, or places:

- (a) hospitals as defined in the *Hospitals Act* and a health authority as defined in the *Health Authorities Act*;**
- (b) profit, not-for-profit or government operated Department of Community Services funded organizations or representatives that are covered under the *Homes for Special Care Act* and the *Children and Family Services Act* including places of safety for children and youth, and customized placements for persons with disabilities;**
- (c) profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* or home care agencies funded under the *Homemaker Services Act*;**
- (d) persons providing care under the self-managed care program, supportive care program, caregiver benefit program funded by the province of Nova Scotia;**
- (e) persons providing support under the Independent Living Support, Supported**

Apartment and Supervised Apartment Programs funded by the Department of Community Services;

(f) homeless shelters receiving operational grants from the Department of Municipal Affairs and Housing, and those operated by religious and other voluntary organizations;

(g) unlicensed child-care facilities;

(h) a place designated or established under the authority of the *Correctional Services Act* or the *Youth Criminal Justice Act* (Canada) for the supervision or custody of offenders and includes community-based correctional services;

(i) any administrative tribunal, arbitration proceeding or court operating essential services in the Province under the authority of any provincial or federal enactment, including but not limited to, a justice centre or courthouse under the authority of the *Judicature Act* or a provincial court under the authority of the *Provincial Court Act* or the *Family Court Act*;

(ia) notwithstanding clause (i), the Labour Board must still comply with section 13 when conducting a vote under the *Trade Union Act*.

(j) Emergency Medical Care Incorporated;

(k) persons providing, servicing or repairing medical equipment, such as wheelchairs, red cross beds/equipment, home oxygen equipment;

(l) private not-for-profit community transportation providers;

(m) food production plants; and

(n) fishing vessels.

16.1 Physical distancing requirements and the person limit set out in sections 13 and 13.1 do not apply to the following municipal entities and their contractors when carrying out their work duties:

(a) Police and Fire Services;

(b) Municipal Utilities such as water, wastewater and stormwater;

(c) Maintenance of utilities and municipal facilities;

(d) Transportation;

(e) Road maintenance/repair;

- (f) Municipal ICT systems and services;
- (g) Public Transit;
- (h) Solid Waste, garbage and litter collection and disposal;
- (i) Urban Forestry; and
- (j) Municipal logistic, distribution, storage, inventory and repair services.

16.2 Physical distancing requirements and the person limit rule set out in sections 13 and 13.1 do not apply to the following provincial entities and their contractors when carrying out their work duties:

- (a) Transportation and Active Transit;
- (b) Infrastructure and Housing;
- (c) Road maintenance/repair;
- (d) Government building construction and/or repair; and
- (e) Enforcement or compliance officers authorized by their statutory appointments or delegated authority to inspect, investigate and/or enforce provincial legislation while carrying out their powers pursuant to the relevant statutory authority.

17. Gatherings for sleep over camps held by a recognized business or organization are cancelled for 2021 unless otherwise amended.

18. For the purpose of sections 18.2 -18.6, a “mask” means a commercial medical or non-medical mask or a home-made mask made as per the PHAC instructions located at: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/sew-no-sew-instructions-non-medical-masks-face-coverings.html>, that covers the nose and mouth.

18.1 For the purpose of section 18.2, a “public place” means the part of the following places accessible to the public,

insofar as it is enclosed:

- (a) a retail business, a shopping centre, or a building or room of a business where personal care services are provided;
- (b) a restaurant or a liquor licensed establishment, including the kitchen and preparatory space of a restaurant or a liquor licensed establishment;

- (c) a place of worship or faith gathering;**
- (d) a place where activities or services of a cultural or entertainment nature are offered;**
- (e) a place where sports are played, fitness, recreational or leisure activities are carried on;**
- (f) a rental hall or other place used to hold events, including conventions and conferences, or to hold receptions;**
- (g) a place where municipal or provincial government services are available to the public;**
- (h) a common area, including an elevator, of a tourist accommodation establishment;**
- (i) a lobby, reception area or elevator in an office building;**
- (j) a common area or public space on a university or college campus;**
- (k) a train or bus station, a ferry terminal, or an airport;**
- (m) common areas of a multi-residential building;**
- (n) all common areas of private indoor workplaces;**
- (o) private indoor workplaces where there are:
 - (i) interactions with the public;**
 - (ii) areas with poor ventilation; or**
 - (iii) areas where physical distance as set out in section 13 cannot be maintained,****

and insofar as it is outdoors:

- (p) all serviced areas of a restaurant or a liquor licensed establishment, including their patios but excluding holes on the golf course that are licensed; and**
- (q) organized outdoors gatherings such as special or temporary events where 2 metres (6 feet) physical distancing cannot be consistently maintained.**
- (r) outdoors where physical distancing cannot be maintained such as playgrounds and parks.**

18.2 All persons must wear a mask that covers their nose and mouth while present in a public place.

18.3 Notwithstanding section 18.3, a person is exempt from the requirement to wear a mask in a public place if the person:

- (a) is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;**
- (b) for whom the wearing of a mask is not possible because of the person's medical condition;**
- (c) is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*;**
- (d) is in the public place receiving care or being provided a service or while participating in a physical or other activity requiring the mask be removed, in which case the person may remove the mask for the duration of the care, service or activity;**
- (e) removes the mask momentarily for identification or ceremonial purposes;**
- (f) is in a courtroom, jury room or secured area in a courthouse, or room where a proceeding or meeting of an administrative tribunal established by legislation is being held; or**
- (g) is a performer at a virtual event or officiant in the course of performing activities requiring vocalization such as talking or singing at an event or activity as described in sections 15 or 15.1.**

18.4 All persons must wear a mask that covers their nose and mouth as defined in section 18 while travelling on vehicles providing transportation to the public, including:

- (a) any municipally operated public transit, including municipally operated buses and ferries;**
- (b) any public passenger vehicle licensed under the *Motor Carrier Act*, including community transit vehicles, commercial vehicles (shuttle vans), and vehicles providing charters and/or tours;**
- (c) any school buses licensed under the *Motor Carrier Act* and any vehicles of any capacity operated by private schools recognized by the Minister of Education and Early Childhood Development;**

(d) commuter vehicles and courtesy vehicles as defined under the *Motor Carrier Act*, vans, mini-buses, or buses of any passenger capacity providing services to the public;

(e) any vehicles serving residents and staff of facilities listed in section 20.1; and

(f) taxicabs regulated by municipalities under the authority of the *Motor Vehicle Act*.

18.5 Notwithstanding section 18.4, the following persons are exempt from the requirement to wear a mask while travelling on vehicles providing transportation to the public:

(a) a person is less than 2 years of age or age 2 to 4 years and their caregiver cannot persuade them to wear a mask;

(b) a person for whom the wearing of a mask is not possible because of the person's medical condition; and

(c) a person who is reasonably accommodated by not wearing a mask in accordance with the *Nova Scotia Human Rights Act*.

18.6 A person may remove the mask momentarily for identification purposes when boarding any public transit set out in section 18.4.

18.7 For greater certainty, the requirement to wear a mask, as set in section 18 and 18.4, is the minimum standard that persons and businesses must adhere to, and where the business's plan approved in accordance with section 26.1 of this Order imposes a greater standard, then that standard applies.

19. Effective 8:00a.m. May 10, 2021:

(a) all public schools under the jurisdiction of a regional centre for education or the Conseil Scolaire Provincial are closed to students and pre-primary children and may remain open for staff to carry out work duties at the direction of the employer; and

(b) private schools are closed to students and may remain open for staff to carry out work duties at the direction of the employer.

19.1 For greater certainty, section 19(b) does not include post-secondary institutions, private career colleges or registered language schools.

19.2 Childcare facilities and family childcare homes regulated under the *Early Learning and Child Care Act*:

(a) may remain open; and

(b) directors, caregivers, staff, visitors and children over two years old must wear a mask as defined in section 18, unless subject to one of the exemptions as set out in section 18.3.

**PART III
LONG TERM CARE FACILITIES
AND
OTHER VULNERABLE POPULATIONS**

20. Effective 8:00a.m. May 14, 2021, except where otherwise stated in this Order, the restrictions on long term care facilities and other vulnerable populations apply to all persons present and residing in Nova Scotia.

20.1 Notwithstanding section 16(b) and (c) and subject to section 20.2, all for-profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* and all Adult Residential Centers and Regional Rehabilitation Centers funded and licensed by the Department of Community Services under the *Homes for Special Care Act* must comply with Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:

<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>;

20.2 All long term care facilities licenced by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act*, and all residents of such facilities must comply with the process for isolating COVID-19 positive long term care residents set out in Schedule "A", "COVID-19 Management Long Term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:

<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.3 All long term care facilities licensed by the Department of Health and Wellness and all Adult Residential Centers and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are closed to visitors and volunteers, except 2 designated caregivers, in accordance with the terms and conditions set out in Schedule "A", "COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health", dated December 21, 2020, as amended from time to time and located at:

<https://novascotia.ca/dhw/ccs/documents/COVID-19-Management-in-Long-Term-Care-Facilities-Directive.pdf>.

20.4 All homes licensed by the Minister of Community Services for persons with disabilities under the *Homes for Special Care Act* not referred to in section 20.3 are closed to visitors.

20.5 Subject to 20.6, all residents in homes licensed by the Minister of Health and Wellness and all residents in homes licensed by the Minister of Community Services under the *Homes for Special Care Act* are not permitted to have community access.

20.6 Notwithstanding section 20.5, all residents in homes licensed by the Minister of Health and Wellness and the Minister of Community Services under the *Homes for Special Care Act* may participate in drives by a designated caregiver or staff, but such outings must not include:

- (a) other passengers in the case of drives by a designated caregiver; or**
- (b) stops or drive throughs.**

20.7 All residents of all Adult Residential Centres and Regional Rehabilitation Centers licensed by the Department of Community Services under the *Homes for Special Care Act* are not permitted to have community access.

20.8 For the purpose of section 20.9, “Adult Day Program” means a planned program of activities in a professional care setting designed for older adults who require supervised care during the day, or those who are isolated and lonely. Adult day care centers enable seniors to socialize and enjoy planned activities in a group setting, while still receiving needed health services. At the same time, they offer family caregivers respite from caregiving duties while knowing that their loved one is in a safe place.

20.9 All senior’s Adult Day Programs are closed, except for provision of respite care.

20.10 All Day Programs for persons with disabilities funded by the Department of Community Services are closed, except for scheduled vaccine clinics at these locations.

20.11 For greater clarity, nothing in this Order prevents the:

- (a) discharge of a COVID-19 patient from a hospital to a long-term care or residential care facility;**
- (b) transfer of a COVID-19 patient from community to a long-term care or residential care facility; or**
- (c) return of a COVID-19 patient who has left a long-term care or residential care facility for healthcare services back to that facility after receiving treatment at a hospital.**

**PART IV
BUSINESSES, ORGANIZATIONS AND PROFESSIONS**

21A Effective 8:00a.m. May 14, 2021, except where otherwise stated in this Order, the restrictions on businesses, organizations and professions apply to all established businesses, organizations and professions carrying on business and operating in Nova Scotia.

21.1 The *Occupational Health and Safety Act*, 1996, c.7, s.1, is hereby incorporated by reference and must be followed by all employers, contractors, constructors, suppliers, owners and employees and each shall take every precaution that is reasonable in the circumstances to ensure the health and safety of all persons at or near a workplace.

22. All not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may not carry out COVID-19 Point of Care Screening Tests (PCTs) unless the business or organization:

(a) has obtained prior approval from the Office of the Chief Medical Officer of Health; and

(b) complies with any direction issued by me, as Chief Medical Officer of Health.

23. Subject only to specific closures or limitations directed elsewhere in this Order, all not-for-profit and for-profit businesses and organizations operating or carrying on business in Nova Scotia may continue to operate but must implement physical distancing of 2 metres (6 feet) within all workplaces and meeting spaces, except where otherwise provided in this Order.

23.1 Any not-for-profit or for-profit business or organization carrying on business in Nova Scotia that cannot maintain the physical distancing requirements set out in section 13 of this Order must limit the number of customers or clients on its premises to no more than 5 persons at a time.

24. Restaurants and liquor licensed establishments are:

(a) restricted to providing food and alcohol take-out and delivery service only; and

(b) prohibited from offering in-person dining, except to serve guests of the hotel within which a restaurant or licensed establishment is located.

24.1 Restaurants offering in-person dining service under section 24(b) must:

(a) collect and maintain records of each patron contact information that includes the following minimum data:

- (i) name(s);
- (ii) contact telephone number;
- (iii) date; and
- (iv) time,

that the patron was at the restaurant or liquor licensed establishment;

(b) retain information collected under section 24.1 for a period of 30 calendar days and destroy it on the following day immediately thereafter;

(c) provide the information collected under section 24.1 to the Chief Medical Officer of Health or his delegate in electronic form; and

(d) only use the information collected under section 24.1 for the purpose of provision to the Chief Medical Officer of Health in compliance with this Order and may not use it for any other purpose.

24.2 Liquor licensed establishments and non-liquor licensed establishments, including community centres, charities or organized clubs, are prohibited from hosting patrons for activities such as darts, pool, bingo or bowling.

25. Regulated and unregulated health professions practicing may continue to practice and provide services within their scope of practice if they have a Workplace COVID-19 Prevention Plan that has been approved by the Chief Medical Officer of Health.

26. All not for-profit, for-profit businesses, organizations and professions named in Part IV of this Order shall, as a requirement of their ongoing operations, develop and comply with a Workplace COVID-19 Prevention Plan, as amended from time to time.

26.1 In addition to the physical distancing requirements and person limit rule set out in sections 13 and 23.1, the Workplace COVID-19 Prevention Plan required by section 26 shall address the following:

- (a) how to work and interact with customers or clients;
- (b) physical distancing in the workplace;
- (c) cleaning;
- (d) equipment;
- (e) preparing employees to return to work;

(f) preparing for customers or clients; and

(g) monitoring and communicating of plan,

and may be substantially similar to those proposals listed in Schedule “B”, located at: <https://novascotia.ca/coronavirus/docs/Schedule-B-HPA-Order.pdf> for similar businesses or health professionals and must be made available for review by the Chief Medical Officer of Health.

26.2 All businesses or regulated health professionals that are a member of an association listed in Schedule “B” must adopt as their Workplace COVID-19 Prevention Plan the proposal submitted by their association and must be made available for review by the Chief Medical Officer of Health.

26.3 For greater certainty, in the case of conflict between a Workplace COVID-19 Prevention Plan and this Order, the more stringent provision applies.

27. Casino Nova Scotia (Halifax and Sydney locations) and Video Lottery Terminals are closed.

28. Subject to 28.2, all not-for-profit and for-profit fitness facilities such as gyms and yoga studios, sport and recreational facilities such as pools, arenas, tennis courts, and large multipurpose recreation facilities:

(a) are closed to patrons,

but may open

(b) to offer virtual classes; and

(c) to perform administrative and operational functions.

28.1 Businesses and organizations that offer indoor recreation and leisure activities such as indoor play areas, arcades, climbing facilities, dance classes and music lessons are closed.

28.2 All not-for-profit and for-profit fitness facilities, recreation and leisure businesses, and organized clubs may offer outdoor fitness classes and other recreational activities up to a maximum capacity of 5 persons, or multiple groups of 5 each on their premises, while ensuring 2 metres (6 feet) physical distance between participants.

29. All personal service establishments such as hair salons, barber shops, spas, nail salons and body art establishments are closed for provision of personal services but may sell retail products in accordance with section 31.3.

30. The Art Gallery of Nova Scotia and all museums and public libraries are closed, but libraries may offer curbside pickup and drop-off of books and other materials.

31. For the purpose of sections 31.1 and 31.2, “retail business” means a business operating on an ongoing basis at a fixed location primarily selling goods or products for use or consumption by individual purchasers.

31.1 Retail business primarily or substantially providing consumer products essential to the life, health or personal safety of individuals and animals, including:

- (a) food;**
- (b) pharmaceutical products, medicine and medical devices;**
- (c) personal hygiene products;**
- (d) cleaning products;**
- (e) baby and childcare products;**
- (f) gas stations and garages;**
- (g) computer and cell phone service and repair;**
- (h) electronic and office supplies;**
- (i) hardware supplies and home appliances;**
- (j) pet and animal supplies;**
- (k) gardening supplies;**
- (l) workplace safety supplies; and**
- (m) automobile purchases (by appointment only); and**
- (n) laundromats,**

may remain open but must, at all times, limit the number of customers in the store to a maximum of 25% of store capacity.

31.1.2 Effective at 8 a.m. May 8, 2021:

(a) all persons present or residing in Nova Scotian must designate one person per household to carry out purchase of products essential to the life, health or personal safety of individuals and animals; and

(b) retail businesses operating under section 31.1 to 31.2.1 must limit one person per household to enter to their business to complete purchase of products essential to the life, health or personal safety of individuals and animals,

but

(c) exceptions to (a) and (b) may be made for children and caregivers.

31.2 NSLC and their Agency Stores may remain open but must, at all times, limit the number of customers in the NSLC retail stores and their Agency Stores to a maximum of 25% of store capacity.

31.2.1 Liquor boutiques, distilleries, breweries and wineries:

(a) may remain open but must, at all times, limit the number of customers to a maximum of 25% of store capacity,

but

(b) are prohibited from offering in-person tastings, samplings or in-person dining.

31.3 All other retail businesses must restrict customer service to online, delivery, or door side or curbside pick-up and should restrict in store presence only to staff and no customers shall be permitted in such retail stores.

31.4 For greater clarity:

(a) shopping malls may remain open to facilitate the shopping as outlined in sections 31.1 to 31.3; and

(b) customers may

(i) may enter the mall to complete their shopping transaction while using contactless payment, whether for in-person shopping under section 31.1 and 31.2, or for curb-side pickup;

(ii) must go directly to the retail business to complete their shopping transaction;

(iii) may line up outside the entrance of the retail business while maintaining a physical distance of at least 2 metres (6 feet) from other persons inside the shopping mall; and

(iv) must wear a mask as defined in section 18 while in the shopping mall to complete their purchase, unless they are entitled to any of the exceptions set out in section 18.3,

(c) no line up outside any one retail business located inside the shopping mall shall exceed 5 persons;

(d) the person responsible for the shopping mall must ensure that:

(i) music is not played at the place of business at a decibel level that exceeds the level at which normal conversation is possible, and in any event no greater than 50 db;

(ii) customers are not permitted to loiter in any area of the shopping mall; and

(iii) directional markings are provided to manage the flow of persons

within the mall,

(e) the non-retail public areas in the mall shall be closed, other than for traffic flow/store access and washroom access; and

(f) notwithstanding clause 31.4(e), food courts are closed to the public but:

(i) food court vendors may provide services to persons who work in the mall;

(ii) tables in food courts may only be used by persons who work in the mall;

(iii) a minimum of 2 metres (6 feet) is maintained between patrons seated at food court tables and between other patrons in the food court;

(iv) patrons must wear a mask as defined in section 18 except when consuming food or beverages; and

(iv) each food court vendor may offer takeout food service.

31.5 For greater certainty, shopping malls are closed to the public for in-person shopping as set out in section 31.4 and persons are prohibited from going to a mall except to complete a purchase transaction as set out in section 31.4 or to enter their workplace located in the mall.

PART V EXCEPTIONS

32. Under exceptional circumstances and under the authority granted to me as the Chief Medical Officer of Health under Part I of the *Health Protection Act*, I may exercise discretion to grant an exception to any term and condition of this Order.

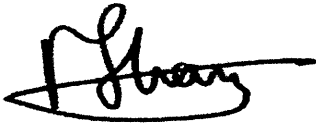
PART VI PENALTIES

33. Any direction provided by a medical officer of health to a person, business, organization or other entity pertaining to COVID-19 and the terms and conditions of this Order must be followed.

34. Failure to comply with this health protection order may be considered a breach of this Order issued under the *Health Protection Act* and may result in penalties under the *Act*.

This Order remains in effect until notice is provided by myself, as Chief Medical Officer of Health, under the authority granted under Part I of the *Health Protection Act* and will be updated from time to time.

Signed:

A handwritten signature in black ink, appearing to read 'R. Strang', written over a horizontal line. A vertical line is drawn to the right of the signature.

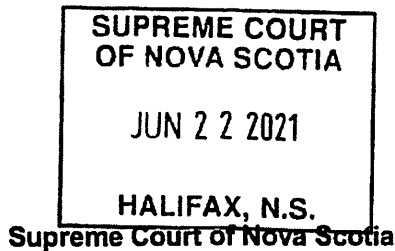
Dr. Robert Strang
Chief Medical Officer of Health
Nova Scotia Department of Health and Wellness

cc The Honourable Iain Rankin, Premier of Nova Scotia
The Honourable Zach Churchill, Minister of Health and Wellness
Laura Lee Langley, Deputy to the Premier and Clerk of Executive Council
Dr. Kevin Orrell, Deputy Minister of Health and Wellness
Dr. Shelley Deeks, Acting Deputy Chief Medical Officer of Health
Tina M. Hall, Legal Counsel, Nova Scotia Dept. of Justice

This is Exhibit "J" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a horizontal black line. The signature is stylized and appears to be the name 'Ayea'.

2021



Hfx. No. 506040

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

and

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

and

The Canadian Civil Liberties Association

Respondents

BEFORE THE HONOURABLE JUSTICE GAIL GATCHALIAN IN CHAMBERS:

WHEREAS the Applicant obtained an *ex parte* order for injunctive relief against the Respondents on May 14, 2021, before the Honourable Justice Scott Norton in Chambers;

AND WHEREAS a Notice of Motion was filed by the Attorney General of Nova Scotia requesting an Order discharging the Injunction Order;

AND UPON reviewing the materials filed herein, including the Solicitors Affidavit of Duane Eddy, sworn June 11, 2021;

AND UPON hearing submissions of counsel for the Attorney General of Nova Scotia and The Canadian Civil Liberties Association:

IT IS ORDERED THAT:

1. The Injunction Order granted on May 14, 2021 in this proceeding is hereby discharged.
2. Service on the Respondents of the Order discharging the injunction, granted on May 14, 2021 in this proceeding, is deemed sufficient by posting the Order on the Provincial Government website: <https://novascotia.ca/coronavirus/>.
3. The motion is granted without costs to any party.

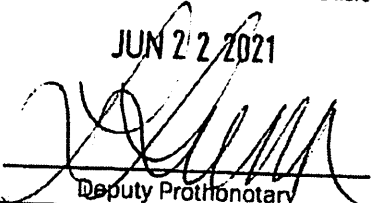
Issued at Halifax, Nova Scotia on June 22 2021.

Prothonotary

LORRAINE LUNN
Deputy Prothonotary

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the seal of the court, is a true
copy of the original document on the file herein.

JUN 22 2021



Deputy Prothonotary

LORRAINE LUNN
Deputy Prothonotary

This is Exhibit "K" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to consist of several connected loops and strokes.

VIA COURIER and FAX: 902-424-0524

June 22, 2021

The Honourable Justice James L. Chipman
Supreme Court of Nova Scotia (HRM)
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord:

**Re: Attorney General of Nova Scotia v. Freedom Nova Scotia et al - Hfx No. 506040
Hearing – June 30, 2021 – 9:30 a.m.**

I am writing to advise that Justice Gail Gatchalian granted the Attorney General's motion for an Order discharging the injunction in this proceeding. Given that the injunction has been discharged, pursuant to paragraph nine (9) of the Injunction Order, the Attorney General submits that there is no longer a live controversy. The Attorney General submits that the matter is moot and relies on the enclosed case of *Coaker v. Nova Scotia (Attorney General)* 2018 NSSC 291, wherein Justice Rosinski reviewed the law of mootness beginning at paragraph 14.

At paragraph 16, Justice Rosinski in *Coaker* (supra) set out the following (*inter alia*):

15 The factors to be considered in deciding whether a moot legal dispute should nevertheless be heard by a court have been articulated in: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; and *Springhill Institution v. Richards*, 2015 NSCA 40, per Beveridge JA.

16 In *Richards*, Justice Beveridge stated:

52 Nonetheless, the Attorney General asks this Court to exercise its discretion to hear and decide these appeals. He relies on the principles set out by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, and recently applied by that Court in *Mission Institution v. Khela*, 2014 SCC 24.

53 Justice Sopinka, writing for the Court in *Borowski*, stressed that certain established principles guide how a court should exercise its discretion. These include whether: there is still an adversarial context; resolution will have some practical consequences on the rights of the parties; the cases that spark the controversy are of a recurring, but brief duration; it is in the public interest to expend judicial resources to mitigate the social cost of

continued uncertainty in the law; adjudicating may be viewed as intruding into the role of the legislative branch (pp. 358-362).

The Attorney General submits that the principles set out in *Borowski* (supra) when applied in the context of an injunction order that has been discharged militate against proceeding with the re-hearing on June 30th for reasons that include the following:

- ***“there is still an adversarial context”***

There is no longer a live controversy or adversarial context. No party is advocating in favour of the injunction continuing given the Order discharging the injunction granted by Justice Gatchalian. Furthermore, no contempt proceedings have been brought against any person under the Injunction Order. Consequently, no person's rights or liberties are in jeopardy under the Injunction Order - see also the affidavit of Hayley Critchton, at paragraph 18, filed with the court on June 16, 2021. The fact that there are no outstanding contempt proceedings requiring adjudication further supports the Attorney General's submission that an adversarial context no longer exists in this case.

- ***“resolution will have some practical consequences on the rights of the parties”***

An injunction is granted on a case-by-case basis on evidence. The Injunction Order granted on May 14, 2021 incorporated verbatim certain restrictions contained in the Public Health Order. The Public Health Order remains effective and has gone unchallenged by the Canadian Civil Liberties Association (hereinafter, the “CCLA”). The Attorney General submits that this Honourable Court's jurisdiction regarding public peace, order, and safety does not conflict with the provisions of the *Health Protection Act* or the Public Health Order issued under section 32 of that *Act*. There is no practical consequence on the rights of the parties when the impugned provisions of the Injunction Order remain incorporated into the Public Health Order, which all Nova Scotians are legally required to comply with.

- ***“the cases that spark the controversy are of a recurring, but brief duration”***

The Injunction Order was granted under the exceptional circumstance of the worst wave of COVID-19 – the “Third Wave”. In the third wave daily case infections of COVID-19 ballooned into the triple digits. This matter has no precedential value given that injunctive relief is an equitable remedy and is granted on a case-by-case basis based on evidence. The injunction was an extraordinary remedy granted in extraordinary circumstances. No injunctive relief was sought during the first or second wave and any possible future injunctions must be considered on its own facts and evidence.

- ***“it is in the public interest to expend judicial resources to mitigate the social cost of continued uncertainty in the law”***

The rule pertaining to *ex parte* applications or *quia timet* injunctions and when they may be granted does not need clarification.

The CCLA alleges that this Honourable Court issued an illegal injunction in this proceeding and argues that the injunction order violates *Charter* rights and is overly broad. The Attorney General disagrees. This Honourable Court upon hearing evidence inclusive of the expert evidence of Dr. Robert Strang, Chief Medical Officer of Health, issued a *quia timet* injunction. The burden of proof on a *quia timet* injunction is much higher than a regular injunction. The

Province met the burden required to obtain a *quia timet* injunction in this matter. The Province accurately set out the law pertaining to *quia timet* injunctions in its written submission to the court, which the court then referenced in its written decision. The Province also provided the evidentiary foundation supporting the *quia timet* injunction. The evidentiary foundation for the *quia timet* injunction was accepted by this Honourable Court. The evidentiary foundation was set out in the court's written decision. The Province wishes to clarify the CCLA's assertion that the injunction is the Province's injunction. The impugned Injunction Order is not the Province's Order it is an Order of the Supreme Court of Nova Scotia granted on evidence provided by the Province.

- ***"adjudicating may be viewed as intruding into the role of the legislative branch"***

The Attorney General applied for the Injunction Order granted on May 14, 2021, to ensure compliance with the Public Health Order issued under s. 32 of the *Health Protection Act*.

Moreover, the Public Health Order remains in effect and sets out restrictions on illegal gatherings and the activities that cause illegal gatherings to occur. The CCLA is not challenging the Public Health Order. Adjudication of the impugned provisions of the Injunction Order which mirror the conditions prohibiting illegal gatherings in the Public Health Order and the activities set out in the Public Health Order that cause illegal gatherings to occur may be viewed as intruding into the role of the legislative branch.

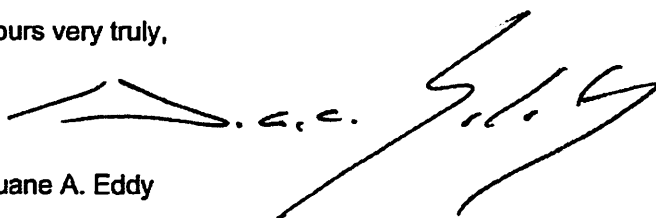
Furthermore, when Justice Gabriel set filing deadlines on June 4, 2021 with respect to the re-hearing of the injunction application, his Lordship encouraged the parties to communicate to possible resolve some or all of the issues in this proceeding. The Order discharging the Injunction Order has effectively resolved the matter.

Conclusion

Based on the foregoing, the Attorney General requests that the June 30th hearing be removed from the docket and the filing deadlines pertaining to that hearing be set aside.

All of which is respectfully submitted.

Yours very truly,

The image shows a handwritten signature in black ink. The signature is stylized and appears to read 'D. A. Eddy'. To the left of the signature, the initials 'D.A.E.' are printed in a small, sans-serif font.

Duane A. Eddy

DAE/jdm
Enclosure

cc: Benjamin Perryman and Nasha Nijhawan

This is Exhibit "L" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid black horizontal line. The signature is stylized and appears to be a name, possibly "Ryan".

Court Administration

JUN 25 2021

Halifax, N.S.

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

and

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

and

The Canadian Civil Liberties Association

Respondents

BRIEF OF THE ATTORNEY GENERAL OF NOVA SCOTIA
MOTION FOR RE-HEARING

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COUNSEL FOR THE APPLICANT

Index	Page
Executive Summary.....	3
Part I. Evidence Intended to be Proven at the Re-Hearing	6
Part II. Issues.....	22
Part III. Argument/Law.....	23
Part IV. Relief Sought.....	75

Executive Summary

1. My Lord, please accept the following submissions on behalf of the Applicant, the Attorney General of Nova Scotia in response to the Canadian Civil Liberties Association of Canada's motion for re-hearing of the Province's *quia timet* injunction application. The *quia timet* injunction granted by Justice Norton on May 14, 2021, prohibits "Illegal Public Gatherings" and the activities that cause these gatherings to occur within the Province.
2. The court accepted Dr. Strang's evidence and expert opinion that illegal public gatherings put all Nova Scotians at risk of contracting COVID-19, not just the Respondents, and are determinantal to public health. Nova Scotia's approach to combating the COVID-19 global pandemic has been to attempt to protect Nova Scotians and control the spread of the virus through the enactment of Public Health restrictions on gathering limits, physical distancing and mandatory masking, no greater than reasonably required to mitigate the risk that this communicable disease poses to everyone residing within provincial borders. The injunction is another tool to ensure that those objectives are met.
3. Individuals who contravene the Public Health Order are liable on summary conviction and subject to fines and in the case of individuals imprisonment, pursuant to s. 71 of the *Health Protection Act*.¹ The Injunction Order provides for those same penalties to be imposed in proceedings for contempt of court. The power of the court in contempt proceedings also permit a tailored approach for deterrence that may be directed to each offender on a case-by-case basis. In addition to fines and imprisonment the court may impose conditions against the offender to ensure that future breaches of the Public Health Order that endanger public health are prevented. As set out in the Province's Notice of Application in Chambers (*Ex Parte*) the grounds submitted by the Province for the injunction are to ensure compliance with the provisions of the *Health Protection Act* and to authorize law enforcement to engage in enforcement measures to ensure compliance with the Public Health Order
4. The Canadian Civil Liberties Association (hereinafter "the CCLA") asserts that the Injunction Order is unlawful and violates the *Charter*, namely freedom of expression, assembly, and liberty. The CCLA also claims that the Injunction Order is overbroad and is not supported by the evidence.

¹ Restated Order, dated May 31, 2021, Supplemental Affidavit of Dr. Strang, Exhibit "A".

5. The Attorney General opposes the CCLA's motion in its entirety. The Injunction Order is not overbroad or unlawful and does not infringe *Charter* rights. The Injunction Order makes individuals who breach the Public Health Order in relation to gathering limits and activities that cause illegal public gatherings to occur liable for contempt of court. Prohibiting illegal public gatherings is rationally connected to its purpose of preventing or reducing the transmission of COVID-19, a deadly communicable disease. The harm that the Injunction Order prevents or reduces is "death".
6. In the alternative, the Injunction Order minimally impairs the right to freedom of expression, peaceful assembly, and liberty because persons are permitted to protest, engage in expression, and assemble so long as that activity complies with the Public Health Order. For instance, persons may protest while keeping six feet apart and wearing masks. If the Injunction Order infringes *Charter* rights, as alleged by the CCLA, the infringement is saved by s. 1. Freedom of expression, peaceful assembly, and liberty may be limited through government action in the present case because the alleged infringement prevents harm to vulnerable groups and Nova Scotians. Stopping the spread of COVID-19 is a pressing and substantial objective and any limitation of *Charter* rights is proportional to that objective.² The Province agrees COVID-19 cannot be used as blanket to trample the *Charter*. However, COVID-19 is a disease that can kill Nova Scotians. Reasonable measures have been implemented to protect all Nova Scotians and Nova Scotia's vulnerable populations from the risks and harms connected to this deadly disease. This is not the time to disregard public health measures in favour carrying out acts causing gathering limits to be exceeded further hampering recovery and reopening efforts and causing needless COVID-19 related health complications and deaths.
7. Furthermore, the restraints outlined in the Injunction Order in paragraph 3 (a) (b) and (c) are a mirror image of the prohibitions set out in s. 13.5 and s. 13.6 of the Public Health Order (effective date May 13, 2021) issued under s. 32 of the *Health Protection Act*. The underlying Public Health Order is unchallenged by the CCLA, it has not been struck down and remains valid law. In the present case, the Injunction Order is a valid Court Order in furtherance of a valid statutory scheme intended to protect public health. A validly issued Court Order must be obeyed. How the Injunction Order is enforced and its validity will withstand *Charter* scrutiny until the underlying

² *R v. Oakes*; Threats of violence and harm -see: *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at paragraphs 107-108; *R v. Kawaja*, 2012 SCC 69; *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2009 SCC 3, at para. 28. *R v. Sharpe* 2001 SCC 2 at para. 22: Nevertheless, freedom of expression is not absolute. Our Constitution recognizes that Parliament or a provincial legislature can sometimes limit some forms of expression. Overarching considerations, like the prevention of hate that divides society as in *Keegstra*, supra, or the prevention of harm that threatens vulnerable members of our society as in *Butler*, supra, may justify prohibitions on some kinds of expression in some circumstances. Because of the importance of the guarantee of free expression, however, any attempt to restrict the right must be subjected to the most careful scrutiny.

statutory scheme or the Public Health Order is declared unconstitutional. The Supreme Court has concurrent jurisdiction in this matter. The court's inherent jurisdiction pertaining to public safety and matters related thereto do not conflict with the provisions of the *Health Protection Act*. The court's inherent jurisdiction in regard to all matters pertaining to the *quia timet* injunction application have not been removed by the *Health Protection Act* or by any other statute.

8. The CCLA's motion should be dismissed with costs.

Part. I. Evidence Intended to be Proven at the Re-Hearing

COVID-19

9. Covid-19 is a new disease which can cause adverse health outcomes, including death in individuals with pre-existing medical conditions and in individuals over 65 years of age. People not in a high-risk group can also experience adverse health outcomes after contacting the SARS-CoV-2 virus which causes Covid-19.

[Dr. Strang, Affidavit]

10. In addition, SARS-CoV-2 is a new strain of coronavirus for which there is no underlying immunity and therefore wide spread of the virus can create a significant burden of disease and negative impacts on health systems, communities and economies.

[Dr. Strang, Affidavit]

11. There are at present no drug therapies to cure Covid-19 nor its various strains. Accordingly, the only available resources to prevent or reduce the spread of the virus, aside from vaccination, involve the use of public health requirements, including physical distancing measures, limiting the size of gatherings and mandatory mask wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.

[Dr. Strang, Affidavit]

12. Nova Scotia Public Health requires that people maintain a distance of two meters from one another. This physical distance requirement is based on current knowledge regarding the virus' spreading mechanisms.

[Dr. Strang, Affidavit]

13. If left unchecked, SARS-Cov-2 can spread exponentially, for this reason, it is critical that public health requirements are followed in order to minimize the spread of the virus, reduce long-term consequences, and reduce the number of hospitalizations and deaths. It is therefore imperative to reduce the number of contacts an individual has with others to reduce the risk of spread of the virus.

[Dr. Strang, Affidavit]

14. Due to the virus' transmissibility patterns, restrictions on how people interact with others outside of their households are necessary to prevent the transmission of SARS-CoV-2 and its variants, which in turn can effectively reduce cases of Covid-19. This includes mandating the use of mask

wearing in public places, whether indoors or outdoors, particularly where physical distancing cannot be maintained.

[Dr. Strang, Affidavit]

15. Transmission of SARS-Co V-2 can occur even when infected people are asymptomatic. SARS-CoV-2 is spread primarily from close person to person contact. The virus may be transmitted by respiratory droplets or droplet nuclei (aerosols) produced when an infected person breathes, coughs, sneezes, talks, or sings. The virus may also be transmitted by touching a surface or object contaminated with the virus and then touching the eyes, nose, or mouth.

[Dr. Strang, Affidavit]

16. Risk of SARS-Co V-2 transmission depends on many variables, such as location (indoors versus outdoors), quality of ventilation, and activity. The Public Health Order requires that people maintain a distance of two meters (six feet) from one another. This physical distance requirement is based on current knowledge of droplet spread which is the main way the virus spreads between people.

[Dr. Strang, Affidavit]

17. These requirements are designed to be implemented together as no one measure alone will prevent all SARS-CoV-2 person-to-person transmission.

[Dr. Strang, Affidavit]

18. The time from infection with SARS-CoV-2 until the development of observable symptoms is called the incubation period. The incubation period can last 14 days or very rarely longer. Unfortunately, infected people can transmit SARS-CoV-2 to others beginning about 48 hours before symptoms are present (pre-symptomatic transmission) until at least 10 days after, longer if symptoms continue past 10 days.

[Dr. Strang, Affidavit]

19. Not all people infected with SARS-CoV-2 develop symptoms but, even without symptoms, an infected person can transmit the virus to others. This is called asymptomatic transmission.

[Dr. Strang, Affidavit]

20. SARS-CoV-2 can be spread through direct or indirect (surfaces) contact with an infected person. Community spread refers to the spreading of a disease from person to person in the community.

Community spread can occur when the source is known or unknown. The latter form of spread poses a serious threat to the community. The effectiveness of contact tracing is greatly reduced in cases of unknown community spread.

[Dr. Strang, Affidavit]

21. COVID-19 testing is available in Nova Scotia for both asymptomatic and symptomatic people, people in outbreak settings, and people identified as a close contact of a case. A COVID-19 test result only reflects a snapshot of a moment in time. A negative result does not necessarily mean that the person is not infected. A person infected with SARS-CoV-2 could have 13 days of negative results and a positive test on day 14.

[Dr. Strang, Affidavit]

Nova Scotia's Current COVID-19 Situation (as of May 12, 2021 and June 15, 2021)

- ***The Spread of COVID-19***

22. Between March 1, 2020 and May 12, 2021, there had been a total of 4152 confirmed cases of COVID-19 and 71 deaths reported.

[Dr. Strang, Affidavit]

23. SARS-CoV-2 can spread exponentially if left unchecked. It is critical that Nova Scotians follow public health requirements and protocols to minimize the spread of the virus and its variants, reduce the long-term consequences, and reduce the number of hospitalizations and deaths.

[Dr. Strang, Affidavit]

24. Left unchecked SARS-CoV-2 virus will spread within a population resulting in an exponential growth in the number of people infected. Public health measures put in place in December 2020 brought cases down. When public health measures were eased in March 2021, cases plateaued but began to rise again in late April. Even with increased public health requirements in place, the number of recognized SARS-CoV-2 infections (COVID-19 cases) had continued to grow dramatically (as of May 12, 2021).

25. During Wave 3 (April 1, 2021 – June 15, 2021), there have been 3987 confirmed cases and 23 deaths have been reported. The cases reported in Wave 3 constitute 70% of the total cases reported in Nova Scotia since March 1, 2020. In addition, there have been 236 hospitalizations (non-ICU and ICU) compared to 12 during Wave 2, 61% of hospitalizations occurred in

individuals <60 years of age and 18.2% of contacts became cases, compared to 7.6% in Wave 2 suggesting that the virus is more transmissible.

[Dr. Strang, Supplemental Affidavit]

Nova Scotia's COVID Health Care Capacity related to COVID-19

26. When this capacity is exceeded, non-COVID-19 patients will experience cancelled treatments for non-urgent conditions. The cancellation of these non-urgent, but necessary, surgeries can have health impacts, such as ongoing pain and mobility issues.

[Dr. Strang, Affidavit]

27. If Nova Scotia's COVID-19 hospitalization capacity is significantly exceeded, it could result in the need to ration acute care resources. This may mean that some patients, who are in need of critical care supports, may be unable to receive those supports.

[Dr. Strang, Affidavit]

28. In Nova Scotia, as of May 11, 2021, there were 1591 active cases of people with COVID-19, 64 people in the hospital due to COVID-19. There were 10 patients in the ICU, 54 patients in non-ICU beds due to COVID-19 and 71 people have died from COVID-19 or associated complications since the first Public Health Order was issued on March 23, 2020. This high level of hospitalization will result in continued cancellation of non-urgent surgical treatments. If the requirements for in hospital care continue to escalate, a need to triage access to care supports, especially supports in intensive care, may be required. This could require doctors and nurses to make decisions between which patients live and which die.

[Dr. Strang, Affidavit]

29. In Nova Scotia, between March 1, 2020 and June 15, 2021, there have been a total of 5729 confirmed cases of COVID-19 and 89 deaths reported.

[Dr. Strang, Supplemental Affidavit]

30. In Nova Scotia, as of June 11, 2021, there were 143 active cases of people with COVID-19, 10 people in the hospital due to COVID-19. There were 6 patients in the ICU, 4 patients in non-ICU beds due to COVID-19 and 89 people have died from COVID-19 or associated complications since the first Public Health Order was issued on March 23, 2020. This level of hospitalization has resulted in increased capacity due to the reduction of COVID-19 cases and viral infection

caused by the risk mitigation strategies incorporated into the public health measures set out in the Restated Order #2, dated May 13, 2021.

[Dr. Strang, Supplemental Affidavit]

Nova Scotia's COVID-19 Public Health Measures

31. Nova Scotia has attempted to control the spread of the SARS-CoV-2 virus by implementing a number of public health requirements under the Public Health Order. Restrictions on how people interact with others outside of their households in public places, whether indoors or outdoors, are necessary to prevent the transmission of SARS-CoV-2 and are effective in reducing cases of COVID-19.

[Dr. Strang, Affidavit]

32. Nova Scotia's approach has been to attempt to protect Nova Scotians and control the spread of the virus through the enactment of Public Health restrictions on gathering limits, physical distancing and mandatory masking, no greater than reasonably required, considering the circumstances of the global pandemic and risk mitigation strategies required to respond to this communicable disease and its negative impact on Nova Scotians' lives. As the number of COVID-19 cases and related hospitalizations, ICU stays, and deaths have increased, public health measures have also evolved.

[Dr. Strang, Affidavit]

33. One of the health measures that Nova Scotia has employed to control the spread is to implement mandatory masking. Masks, when worn properly, are a valuable tool in reducing the transmission of SARS-CoV-2. The use of masking can prevent an infected person from transmitting the virus to others and use of masks, especially medical masks, can help protect a healthy individual from infection in public places, whether indoor or outdoor settings. Masking, on its own, is not sufficient to control the spread of COVID-19.

[Dr. Strang, Affidavit]

34. In response to the number of COVID-19 cases with no identifiable source, Nova Scotia implemented additional public health measures, aimed at limiting the spread in high-risk settings or in settings with high-risk activities. High risk activities are activities that have more expulsions of air than ordinary activities. With increased expulsions of air, there is an increased risk of respiratory droplets or aerosols. For example, singing, shouting, and activities that result in heavy breathing are higher risk activities. These activities also may occur in higher risk settings, such

as in indoor settings or settings where individuals will remain for prolonged periods of time. Reducing time spent indoors with large groups of people and reducing the time spent indoors engaging in high-risk activities can reduce the risk of the spread of COVID-19. Recent evidence also shows that even outdoors, if people are not distanced from each other or masked, transmission can happen from an infectious person to someone else.

[Dr. Strang, Affidavit]

35. The available evidence shows that widespread public masking, in addition to other public health measures, such as reducing time spent indoors with large groups of people (relative to the size of the room and the spacing of people within the room) while engaging in high-risk activities, can contribute to controlling the overall transmission of SARS-CoV-2. In addition, outdoor gatherings must also include measures such as restricted gatherings, and physical distancing and masking in order to prevent COVID-19 transmission.

[Dr. Strang, Affidavit]

36. SARS-CoV-2 can spread exponentially if left unchecked. It is critical that Nova Scotians follow public health requirements and protocols to minimize the spread of the virus and its variants, reduce the long-term consequences, and reduce the number of hospitalizations and deaths.

[Dr. Strang, Supplemental Affidavit]

37. Risk of SARS-Co V-2 transmission continues to depend on many variables, such as location (indoors versus outdoors), quality of ventilation, and activity. The Public Health Order requires that people maintain a distance of two meters (six feet) from one another. This physical distance requirement is based on current knowledge of droplet spread which is the main way the virus spreads between people.

[Dr. Strang, Supplemental Affidavit]

38. Left unchecked SARS-CoV-2 virus will spread within a population resulting in an exponential growth in the number of people infected. Public health measures put in place in December 2020 brought cases down. When public health measures were eased in March 2021, cases plateaued but began to rise again in April and have continued into May. Even with increased public health requirements in place, the number of recognized SARS-CoV-2 infections (COVID-19 cases) grew dramatically in since April 1, 2021, but has decreased exponentially with the implementation of additional public health measures commencing on April 28, 2021.

[Dr. Strang, Supplemental Affidavit]

Anti-Mask, Anti-Lockdown, Anti-Restrictions

39. Worldwide Rally for Freedom and Democracy is a global movement and organizer that has been developed with the explicit objective of spreading anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric.

[Hayley Crichton, Affidavit]

40. In the Nova Scotia context, mask requirements and adherence to restrictions are set out in the Public Health Order.

[Hayley Crichton, Affidavit]

41. The Restated Public Health Order issued by Dr. Robert Strang under section 32 of the *Health Protection Act* 2004, c. 4, s. 1, that was in effect when the Injunction Order was granted by the Supreme Court, on May 14, 2021, is the Public Health Order dated May 13, 2021. (hereinafter, the "Public Health Order"). A true copy of the Public Health Order is marked Exhibit "G" of Hayley Crichton's Supplemental Affidavit.

42. On April 23, 2021, Halifax Regional Police attended a large gathering at a private residence. Twenty-Two (22) fines were issued as a result of this gathering as it was in contravention of the Public Health Order.

[Hayley Crichton, Affidavit]

43. On April 25, 2021, RCMP attended a residence in Wolfville, Nova Scotia, at which 30 people were gathered in contravention of the Public Health Order for a party. Four (4) fines were issued as a result of this gathering.

[Hayley Crichton, Affidavit]

44. On May 3, 2021, New Glasgow Police attended a private residence in Trenton, Nova Scotia. Eight (8) people were gathered in contravention of the Public Health Order and were subsequently ticketed.

[Hayley Crichton, Affidavit]

45. Worldwide Rally for Freedom and Democracy planned a global event entitled, "The Worldwide Demonstration May 15, 2021". The associated open Facebook event page has a total of 31,000 followers.

[Hayley Crichton, Affidavit]

46. In Nova Scotia, participation in the Worldwide Rally for Freedom and Democracy global events is organized by the local Facebook group "Freedom Nova Scotia". The Freedom Nova Scotia Facebook open group has a total of 896 followers and the related Instagram account has 100 followers.

[Hayley Crichton, Affidavit]

47. On March 20, 2021, Freedom Nova Scotia organized an open event on Facebook to rally against mask wearing and restrictions. Attendees gathered in a large group of approximately 100 people, the attendees were not wearing masks and were not maintaining six feet of physical distance, in direct contravention of the Public Health Order. The event drew media attention.

[Hayley Crichton, Affidavit]

48. A picture of the event derived from CTV News is marked Exhibit "B" of Hayley Crichton's affidavit. The picture shows a large gathering of people who can be observed to not be wearing masks, nor maintaining a distance of six feet from one another.

49. Freedom Nova Scotia also organized rallies in the greater Halifax area on March 28, 2021 (Spring Garden Road), April 1, 2021 (Alderney Landing) and May 1, 2021 (Halifax). The rallies were in contravention of the Public Health Order.

[Hayley Crichton, Affidavit]

Anti-Mask Rally

50. Freedom Nova Scotia scheduled an event for Saturday May 15, 2021, at 1:00 pm entitled, "Worldwide Rally for Freedom – Halifax" in support of anti-mask rhetoric. The event is open and there are 261 comments on the event page, with 88 people listed as "interested" and 66 people listed as "going" as of May 12, 2021.
51. Historical public gatherings organized by Freedom Nova Scotia have not complied with the requirements of COVID-19 Emergency Health Orders issued under section 32 of the *Health Protection Act*, including but not limited to:
- a. masking requirements;
 - b. attendance limits applicable to indoor or outdoor gatherings; and
 - c. minimum physical distancing requirements.

[Hayley Crichton, Affidavit]

52. During the week of May 3rd, 2021, Halifax Regional Police Inspector David Boon was contacted by Freedom Nova Scotia event participant Amy Brown via telephone. Ms. Brown requested protection for the rally participants who will attend Citadel Hill to protest the COVID-19 lockdown and restrictions.

[Hayley Crichton, Affidavit]

53. Halifax Regional Police advised Ms. Brown that any such gathering would contravene the Public Health Order, and potentially the Travel Directive issued under the *Emergency Measures Act* 1990, c. 8, s. 1; 2005, c. 48, s. 1. (should people travel in from outside HRM).

[Hayley Crichton, Affidavit]

54. The Halifax Regional Police provided the Province with information pertaining to Freedom Nova Scotia, Worldwide Rally for Freedom and Democracy, inclusive of the related social media posts advertising the event scheduled for Saturday May 15, 2021, at 1:00 pm entitled, "Worldwide Rally for Freedom – Halifax".

[Hayley Crichton, Affidavit]

55. The information provided by the Halifax Regional Police to the Province references multiple rallies hosted by Freedom Nova Scotia. The information provided by the Halifax Regional Police contains photographs depicting attendees gathering without masks and in large groups in direct contravention of the Public Health Order. This is supplemented by screenshots of the open group in which commenters have requested Halifax Regional Police and government intervention.

[Hayley Crichton, Affidavit]

56. A Worldwide Freedom Rally was also being scheduled for Barrington, Nova Scotia on May 15, 2021 at 6 pm at the Barrington baseball field. A Worldwide Freedom Rally was also scheduled for Dartmouth, Nova Scotia (Alderney Landing) on May 15, 2021 at 1 pm.

57. Similar anti-mask, anti-vaccine, anti-restriction protests have taken place across Nova Scotia that have included gatherings of people who were not wearing masks and were not maintaining six feet of physical distance, in direct contravention of the Public Health Order.

[Hayley Crichton, Affidavit]

58. On April 24, 2021, an event was planned at the New Brunswick and Nova Scotia border to protest COVID-19 restrictions, including border closures and mask requirements, by disrupting traffic on Hwy 104. The event organizer Tasha Everett posted the following to her open Facebook page,

"12PM tomorrow! Be there! Its time to make more noise than ever before! Truckers have our backs and are planning to block the highways with us. United we stand, Divided we fall." A screenshot of this post is marked Exhibit "G" of Hayley Crichton's affidavit.

[Hayley Crichton, Affidavit]

59. On May 9, 2021, Kings District Royal Canadian Mounted Police (RCMP) were called to Weston Christian Fellowship Church in Weston, Nova Scotia. 26 people were gathered at the church in contravention of the Public Health Order. 26 fines were laid against individuals and a larger fine was laid against the organizer.
60. On May 12, 2021, the Province received the following information from the RCMP regarding a rally held on May 9, 2021:

PURPOSE:

To update the Attorney General of a protest, in relation to the continued border restrictions between Nova Scotia and New Brunswick that occurred on May 9, 2021.

BACKGROUND:

A group on Facebook, identified as "Support to OPEN The NS/NB Border", organized a protest for May 9, 2021 at 12:00 pm, at the NS Tourism Centre along Hwy 104, immediately as you enter Nova Scotia.

Organizers indicated that this was strictly about the border closure and the impact it is having on everyday lives.

CURRENT STATUS:

An assembly took place as scheduled on May 9, at 12:00 pm.

Approximately 20 protesters assembled along the Nova Scotia side of the Provincial border, Highway 104 Eastbound lane.

At approximately 12:30 pm, a passenger from a vehicle involved in the protest was seen throwing traffic cones into the ditch which had been positioned to block off exit 1.

The interaction between the RCMP and the vehicle passenger was met with hostility from the occupants of the vehicle.

Shorty after, a hostile crowd of 15-20 people formed around the police officer.

Protesters were recording police and expressed negative comments.

Protesters were not wearing masks or social distancing.

All attendees left by 2:30 pm.

Commentary from attendees suggests protests will be a weekly occurrence.

[Hayley Crichton, Affidavit]

61. On May 10, 2021, Dena Churchill posted an advertisement for the May 15, 2021 social gathering on her Facebook page, among other anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric.

Application for Quia Timet Injunction

62. On May 12, 2021, the Attorney General of Nova Scotia filed a Notice of Application in Chambers (*Ex Parte*) for an Injunction Order restraining the Respondents from attending and carrying out activities that cause illegal public gatherings to occur in Nova Scotia.
63. The grounds for the injunction application are set out in the Notice of Application as follows:
- (a) Orders compliance with the provisions of the *Health Protection Act* 2004, c. 4, s. 1;
 - (b) Enjoins the Respondents, and any other person acting under their instructions or in concert with them, from organizing in-person public gatherings: and
 - (c) Authorizes law enforcement to engage in enforcement measures to ensure compliance with the *Health Protection Act* and any Order issued under section 32 of the *Health Protection Act*, or in accordance with the *Health Protection Act*.
64. The Injunction Order was granted on May 14, 2021 by the Supreme Court of Nova Scotia.
65. After the Injunction Order was issued by the Nova Scotia Supreme Court the Attorney General received information from law enforcement regarding enforcement activities and incidents in relation to the Injunction Order and Public Health Order.
66. On May 18, 2021, the Attorney General through Hayley Crichton received a situation report from Royal Canadian Mounted Police (RCMP) Officer Jessica Cogswell pertaining to an illegal public gathering that occurred on or about May 23, 2021. The Attorney General was advised by the situation report of the following:

On behalf of Chief Superintendent Chris Leather, Officer in Charge of Criminal Operations – “H” Division, the following Situation Report is being provided for your awareness.

PURPOSE:

- To update the Attorney General of a number of Summary Office Tickets issued under the Health Protection Act (HPA) in relation to a religious gathering.

BACKGROUND:

- On May 2, 2021, Kingston RCMP received several calls about a large gathering taking place at a church in ████████, Nova Scotia.
- RCMP members attended, explained the HPA. Clients on site refused to disperse, a formal warning was issued to the church.

- On May 9, 2021, Kingston RCMP received several calls about a large gathering taking place at the same church in [REDACTED]. RCMP members attended, explained the HPA and advised all to disperse. Clients on site refused to disperse, 26 Summary Offence Tickets were issued under the HPA.
- On May 15, 2021, the leader of the church was contacted by Kingston RCMP and was warned that a gathering at the church would result in enforcement action.
- On May 16, 2021, Kingston RCMP attended the church, a service was in progress.

CURRENT STATUS:

- Police remained on scene until the end of the service.
- 7 Summary Offence Tickets were issued to clients under the HPA.
- 1 Summary Offence Ticket was issued to the church.
- The clients of the church indicated that they are planning on returning the following Sunday.

STRATEGIC CONSIDERATIONS:

- The Officer in Charge of Southwest Nova District is aware.
- The Officer in Charge of Criminal Operations is aware.

STRATEGIC COMMUNICATIONS:

- "H" Division Strategic Communication Section is engaged.

RECOMMENDATIONS:

- NIL

67. On May 27, 2021, the Attorney General through Hayley Crichton received a situation report from Royal Canadian Mounted Police (RCMP) Officer Jessica Cogswell pertaining to an illegal public gathering that occurred on or about May 23, 2021. The Attorney General was advised by the situation report of the following:

On behalf of Chief Superintendent Chris Leather, Officer in Charge of Criminal Operations – "H" Division, the following Situation Report is being provided for your awareness.

PURPOSE:

- To update the Attorney General of an illegal gathering and summary offence tickets (SOTS) issued under the Public Health Act.

BACKGROUND:

- On May 23, 2021, Cole Harbour RCMP responded to a report of a large house party at a residence in Cole Harbour.
- Upon arrival, loud music was heard coming from the home and a disco ball could be seen from a distance.
- RCMP members were refused entry into the home and the music and lights were turned off.
- Seventeen vehicles were located at the property.

- Members queried all license plates, two vehicles were registered to the residence and the remaining were registered to owners residing within, and outside of Halifax Regional Municipality.
- Members conducted traffic stops throughout the night on vehicles leaving the property.

CURRENT STATUS:

- Nine SOTS have been issued to date, totaling \$21,798.00.
- A Summary Offence Ticket will be issued to the home owner.
- The investigation continues to identify the remaining persons in attendance.

STRATEGIC CONSIDERATIONS:

- None at this time.

STRATEGIC COMMUNICATIONS:

- "H" Division Strategic Communications is engaged.

RECOMMENDATIONS

- Nil.

68. On May 28, 2021, the Attorney General through Hayley Crichton, Director of Public Safety and Investigations, received a situation report from Dan Kinsella, Chief of Police for the Halifax Regional Police. The Attorney General was advised by the situation report of the following:

COVID-19

Response May 15

Background:

On Saturday, May 15, 2021, two events took place in Halifax involving various COVID-19 fractions, at which Halifax Regional Police officers used enforcement actions, including summary offence tickets and arrests.

HRP had reached out to the organizers of both events in advance to make them aware of the current public health restrictions, including, a recent court order issued on Friday. The events proceeded anyway.

Detailed overview:

May 15, 2021

- 1) **Anti-mask Freedom Rally - Anti-mask Freedom Rally -** scheduled from 1300-1500 hours on Citadel Hill. Court injunction led to organizers of this event announcing cancellation of same via social media, however attendees (sic) still arrived to partake, in violation of court order, *Health Protection and Emergency Management Acts*. Arrests and summary offence tickets issued. Approximately 50 people in attendance

Enforcement stats:

- **Health Protection Act (HPA): 9** in total (Five of the nine people that were issued SOTs had to be arrested before they would provide identification).
- **Emergency Management Act (EMA): 2**
- **Arrest: 5** in total, no criminal charges and all released with SOT as stated above
- **File under Investigation: one** ran away and has yet to be identified

2) Palestine Freedom Rally - scheduled from 1300-1500 hours at Saint Mary's University parking lot on Inglis Street/Tower Road. Initially only 20 vehicles involved, however event escalated to more than 200 vehicles involved with over 500 people, causing multiple violations under the *Health Protection, Emergency Management and Motor Vehicle Acts*. Arrests and summary offence tickets issued. Central members tied up for several hours, clearing out the backlog of traffic.

Enforcement stats:

- **Health Protection Act (HPA): 9**
- **Emergency Management Act (EMA): 2**
- **MVA: 6**
- **Arrest: 1** (One male arrested then released with no criminal charges but was issued 4 SOTS).

Strategic Communications:

- Three news releases were issued following the events, as information became available.
- Social media posts were completed in conjunction with the news release.

69. As of June 25, 2021, law enforcement continue to engage in enforcement measures with respect to the Public Health Order issued under s. 32 of the *Health Protection Act*.

[Hayley Crichton, Supplemental Affidavit]

Phased Reopening of the Province

70. Nova Scotia began implementing a phased reopening of the Province consisting of five phases.

71. Nova Scotia's reopening plan takes a phased approach to safely easing restrictions. The 5-phase plan is based on ongoing progress of provincewide vaccination rates and improvements of public health and healthcare indicators like COVID-19 activity and hospitalizations.

[Dr. Strang Supplemental Affidavit]

72. The reopening plan safely eases restrictions over 5 phases as vaccination targets are reached and case numbers and hospitalizations decline. This allows Nova Scotians to safely enjoy summer with public health measures in place while we get most of our population fully

vaccinated. Once that happens, we should be able to further ease restrictions and move in to a new normal of living during COVID-19.

[Dr. Strang Supplemental Affidavit]

73. The 5-phase reopening plan outlines how restrictions will ease while protecting the healthcare system and increasing vaccination rates throughout the province. COVID-19 transmission will continue to be monitored. If required, a phase may be paused to respond to trends at county or provincial levels. Additional plan details will be released to the public as each phase starts.

[Dr. Strang Supplemental Affidavit]

74. Each phase is based on COVID-19 activity, hospitalizations and vaccination rates. Phases are expected to last between 2 to 4 weeks if targets are met in each phase. Testing continues and is monitored throughout all phases.

[Dr. Strang Supplemental Affidavit]

Exceptions During Phase 1

75. During Phase 1, Dr. Strang received a request to grant an exception to the gathering limits in accordance with Section 32 of the Public Health Order. The United Muslim Community of Canada requested approval to gather for in memory and support of the June 6th tragic deaths of the Muslim Pakistani Canadian family.

[Dr. Strang Supplemental Affidavit]

76. Dr. Strang granted the aforementioned exception based on his consideration of the following criteria:

- a.) Importance on the activity for which the request is being made;
- b.) Level of risk (usually has to be a qualitative determination) of this activity, including risk mitigation strategies;
- c.) Level of trust in requester in terms of information provided and adherence to any required protocols;
- d.) Availability of other options to achieve the desired outcome; and
- e.) Precedents – prior exceptions and/or implications of this one

[Dr. Strang Supplemental Affidavit]

77. Notwithstanding the granting of the foregoing exception, it is Dr. Strang's medical opinion that if gathering limits and public health measures are not complied with then that increases the risk of Covid-19 transmission and infection within the population.

[Dr. Strang Supplemental Affidavit]

78. For instance, it was Dr. Robert Strang's medical opinion, as of May 12, 2021, that if the scheduled social gathering was held on or about May 15, 2021 at Citadel Hill, in Halifax, Nova Scotia then there was a substantial risk of Covid-19 transmission among the attendees.

[Dr. Strang, Affidavit]

79. It was also Dr. Strang's medical opinion, as of May 12, 2021, that social gatherings similar to the one intended to be held by Freedom Nova Scotia on May 15, 2021 should not occur anywhere in the Province of Nova Scotia because there is a substantial risk of Covid-19 transmission among the attendees.

[Dr. Strang, Affidavit]

80. Dr. Strang continues to maintain that it his medical opinion that illegal public gatherings or the activities that incite illegal gatherings to occur should be prohibited in the Province of Nova Scotia because illegal public gatherings creates a substantial risk of Covid-19 transmission and viral infections occurring within the Province.

[Dr. Strang Supplemental Affidavit]

81. As stated above the Injunction Order was granted on May 14, 2021.

82. On June 22, 2021, the Applicant obtained an Order discharging the Injunction Order.

83. On June 22, 2021, the Province obtained an Order discharging the injunction because it is no longer necessary to continue with the injunction given the phased reopening of the Province, the continued easing of restrictions, and the current COVID-19 epidemiology data.

84. Before the injunction was discharged no person in Nova Scotia had proceedings for a Contempt Order in relation to the Injunction Order brought against them.

[Hayley Crichton, Supplemental Affidavit]

85. The Attorney General will rely on all other evidence presented during the *ex parte* hearing on May 14, 2021 and the supplemental affidavits of Dr. Robert Strang and Hayley Crichton.

PART II. ISSUES

86. The re-hearing raises the following three issues:

ISSUE 1: Is the *quia timet* Injunction Order supported by the evidence, pursuant to Rule 22.06?

ISSUE 2: Does the Injunction Order infringe *Charter* rights under ss. 2 (b) , 2 (c) or 7?

ISSUE 3: If the Injunction Order violates ss. 2 (b), 2 (c) or 7 of the *Charter*, is the infringement saved by s. 1?

87. Connected to the three issues noted above the CCLA raises the following issues in its written submissions:

ISSUE 1: 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.

ISSUE 2: 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. This discretion has been exercised no less than five times in the last 30 days.

ISSUE 3: The Injunction Order applies until varied by the Court, without limitation.

ISSUE 4: 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.

ISSUE 5: 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.

ISSUE 6: 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.

ISSUE 7: 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.

ISSUE 8: The Injunction Order’s interference with the constitutionally-protected rights of Nova Scotians cannot be demonstrably justified in a free and democratic society.

PART III. Argument/Law

A. Law/Argument

ISSUE 1: 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.

88. The Attorney General relies on his arguments, submissions, and the law pertaining to the *quia timet* injunction set out in the Attorney General's brief filed on May 12, 2021, in support of the injunction application.

89. In response to the CCLA's motion, the Attorney General disagrees with the CCLA's submissions in their entirety.

90. The test for a *quia timet* injunction is set out beginning at paragraph 72 of the Attorney General's brief filed on May 12, 2021:

72. In order to grant a *quia timet* injunction, the Province submits that the court must find the following:

1. The harm that is anticipated is imminent.
2. The harm is irreparable.
3. Damages would not be an adequate remedy.

73. Having regard to the affidavit of Dr. Robert Strang, the harm that is anticipated (continued spread of COVID-19) if the anti-mask rally is permitted is imminent.

74. In the present case, damages are not an adequate remedy because the harm associated with contracting COVID-19 is death. There are also serious medical and health complications that occur in individuals who contract the virus. The associated impact on public health care systems, communities, and economies is immeasurable.

75. In the context of interlocutory injunctions, the balance of convenience analysis requires the court to consider which of the parties would suffer greater harm if the injunction was not granted: *Laurent v. Fort McKay First Nation*, 2008 ABQB 84 (Alta. Q.B.) at para. 10.

76. The Province submits that the balance of convenience does not favour permitting the anti-mask rally to proceed on May 15, 2021. The balance of convenience also does not favour permitting similar events to be held within the Province at any point in the future.

77. There is a greater public interest in maintaining integrity of the current Public Health Order **and the restrictions set out within that Order** than permitting the rally to be carried out as planned.

[Emphasis Added]

91. The Public Health Order, effective May 13, 2021, set out the following restrictions pertaining to illegal public gatherings:

13.4 For the purpose of section 13.6, an "illegal public gathering" is defined as a gathering that does not comply with the requirements of this Order, including:

- (a) the attendance limits applicable to gatherings, whether indoors or outdoors;
- (b) physical distancing requirements; and
- (c) masking requirements.

13.5 For greater certainty, persons are prohibited from:

- (a) organizing an in-person gathering, including requesting, inciting, or inviting others to attend an illegal public gathering;
- (b) promoting an illegal public gathering via social media or otherwise; or
- (c) attending an illegal public gathering of any nature, whether indoors or outdoors

92. The restrictions contained in the Public Health Order (as amended) serve a pressing and substantial objective of reducing or preventing the spread of COVID-19. The evidence of Dr. Strang establishes that he considered how setting social gathering limits reduce the transmissibility of COVID-19 within the population of Nova Scotia.³

93. The purpose of the injunction was set out at paragraph 78 of the Attorney General's brief filed May 12, 2021 as follows:

- prevent further transmission of Covid-19;
- ensure the continued functioning of the health-care system; and
- limit the amount of future deaths due to the virus.

94. With respect to issue number one (1) the Attorney General submits that the CCLA misunderstands the test for a *quia timet* injunction and the evidence required to obtain the injunction. To apply for a *quia timet* injunction to prevent or reduce the risk of future harm/spread of COVID-19 caused by illegal public gatherings, the Province needed to establish an evidentiary foundation that illegal public gatherings have occurred within the Province. If there was no evidence that illegal public gatherings posed a risk of harm than that would have been fatal to the Province's application. The evidence of Hayley Crichton evidenced the fact that persons within Nova Scotia have attended illegal public gatherings, and caused other persons to attend illegal public gatherings within the Province through online communications (Facebook) and other communication mediums in different locations and times since March 2021.⁴

³ Affidavit of Dr. Robert Strang, sworn May 12, 2021.

⁴ Affidavit of Hayley Crichton, sworn May 12, 2021.

95. Having established the occurrence of illegal public gatherings, the Province was then required to present evidence relevant to the following:

(a) the presence of harm;

(b) the probability that the harm will occur is not “*de minus*”; and

(c) the balance of convenience is in favor of prohibiting illegal public gatherings.

96. Justice Norton accepted the Attorney General’s evidence pertaining to the harm sought to be prevented by the injunction.

97. The harm alleged by the Province in its injunction application continues to be the risk of COVID-19 spreading within the Province if illegal public gatherings and the activities that cause these gatherings to occur are not prohibited.

98. There currently still exists a high probability that the harm (spread of COVID-19) will occur because the correlation between illegal public gatherings and the spread of COVID-19 is established in evidence and contained in Dr. Strang’s affidavit sworn on May 12, 2021:

30. One of the health measures that Nova Scotia has employed to control the spread is to implement mandatory masking. Masks, when worn properly, are a valuable tool in reducing the transmission of SARS-CoV-2. The use of masking can prevent an infected person from transmitting the virus to others and use of masks, especially medical masks, can help protect a healthy individual from infection in public places, whether indoor or outdoor settings. Masking, on its own, is not sufficient to control the spread of COVID-19.

31. In response to the number of COVID-19 cases with no identifiable source, Nova Scotia implemented additional public health measures, aimed at limiting the spread in high-risk settings or in settings with high-risk activities. High risk activities are activities that have more expulsions of air than ordinary activities. With increased expulsions of air, there is an increased risk of respiratory droplets or aerosols. For example, singing, shouting, and activities that result in heavy breathing are higher risk activities. These activities also may occur in higher risk settings, such as in indoor settings or settings where individuals will remain for prolonged periods of time. Reducing time spent indoors with large groups of people and reducing the time spent indoors engaging in high-risk activities can reduce the risk of the spread of COVID-19. Recent evidence also shows that even outdoors, if people are not distanced from each other or masked, transmission can happen from an infectious person to someone else.

32. The available evidence shows that widespread public masking, in addition to other public health measures, such as reducing time spent indoors with large groups of people (relative to the size of the room and the spacing of people within the room) while engaging in high risk activities, can contribute to controlling the overall transmission of SARS-CoV-2. **In addition, outdoor gatherings must also include measures such as restricted gatherings, and physical distancing and masking in order to prevent COVID-19 transmission.**

Freedom Nova Scotia Rally

33. It is my medical opinion that if the scheduled social gathering is held on or about May 15, 2021 at Citadel Hill, in Halifax, Nova Scotia that there is a substantial risk of Covid-19 transmission among the attendees.

34. It is also my medical opinion that social gatherings similar to the one intended to be held by Freedom Nova Scotia on May 15, 2021 should not occur anywhere in the Province of Nova Scotia because there is a substantial risk of Covid-19 transmission among the attendees.

[Dr. Strang, Affidavit]

99. The Injunction Order restrained Freedom Nova Scotia, John Doe (s), Jane Doe (s), Amy Brown, Tasha Everett, Dena Churchill and any person acting under the direction or in concert with them independently to like effect from attending illegal public gatherings and engaging in any of the activities set out in the Injunction Order, which the Province proved through the evidence of Hayley Crichton, causes or materially contributes to illegal public gatherings occurring within the Province.
100. Jane Doe(s) and John Doe(s) were named as Respondents to account for the fact that the identities of individuals who may choose to attend illegal public gatherings or engage in activities that cause or materially contribute to illegal public gatherings occurring are unknown and cannot be known. Freedom Nova Scotia had, at all material times, an open facebook group page and on that page Freedom Nova Scotia organized rally's against mask wearing and the restrictions set out in the Public Health Order. Attendees of the rally's were observed not wearing masks and were not maintaining six feet of physical distance in contravention of the Public Health Order. It is that activity and similar activity that poses a direct risk of COVID-19 spread. The fact that Freedom Nova Scotia is not a legal entity is irrelevant. It is the occurrence of illegal public gatherings traced back to Freedom Nova Scotia's advertisements of anti-mask rally's which cause and creates the risk of harm (COVID-19 spread).
101. In addition to all persons residing in Nova Scotia being liable under the Public Health Order if they breach the Order, the naming of Jane Doe(s) and John Doe (s) as Respondents in this proceeding also makes anyone residing in the Province liable under the Injunction Order for attending illegal public gatherings and engaging in activities that cause the gatherings to occur - as set out in paragraphs 3 (a) (b) and (c) of the Injunction Order.
102. The restrictions contained in the Injunction Order incorporate section 13.5 and 13.6 of the Public Health Order by reference. The Injunction Order does not expand the scope of compliance requirements that already exist under the Public Health Order.

103. Since the Public Health Order applies to all persons residing within Nova Scotia it cannot be the case, as suggested by the CCLA, that the intent of the Injunction Order was intended only to apply to the Respondents. The intent as set out in the Province's Notice of Application was to ensure compliance with the Public Health Order and authorize law enforcement to engage in enforcement measures to ensure compliance with the Public Health Order.
104. If individuals contravene the Public Health Order they are liable to a fine or imprisonment under s. 71 of the *Health Protection Act*. Individuals are also subject to a fine or imprisonment for being found in contempt of court for breaching the injunction order. The Injunction Order also permits a tailoring of penalties to be imposed against offenders who ignore the Public Health Order where measures imposed under the Public Health Order prove ineffective at deterring further breaches, for example. The Injunction Order is another tool to be used to combat the spread of COVID-19 and another wave of COVID-19 community spread and possible deaths.
105. In the original application hearing, the court found that the Province met the balance of convenience criteria at paragraphs 26 to 32 of the court's written decision. The court found that there was a greater public interest in maintaining integrity of the Public Health Order rather than permitting the illegal gathering to occur.⁵ The Injunction Order appropriately applied to anyone who breached the Public Health Order. The CCLA's position that the injunction shouldn't have applied to all Nova Scotians is without merit nor is it supported by evidence or epidemiology data.
106. As your Lordship is well aware, superior courts possess "inherent jurisdiction" and have original jurisdiction in any matter unless jurisdiction is clearly taken away by statute.⁶
107. The Supreme Court of Nova Scotia's inherent jurisdiction to grant *quia timet* injunctive relief in the present case does not conflict with the provisions of the *Health Protection Act*. Therefore, the Attorney General submits that the Supreme Court has concurrent jurisdiction in this matter and may grant a *quia timet* injunction on the same terms or conditions as set out in an unchallenged statutory scheme and Public Health Order.
108. The case of *Beaudoin v. British Columbia*, 2021 BCSC 248 referred to by the CCLA in its written submissions at paragraph 33 is distinguishable. In *Beaudoin*, the provincial government brought a motion for injunctive relief in the context of a *Charter* challenge to the underlying public health order commenced by religious groups. *Beaudoin* was not an application for a *quia timet*

⁵ Justice Norton's written Decision at para. 32.

⁶ *MacMillan Bloedel Ltd. v. Simpson* 1995 CarswellBC 974, at paragraph 38.

injunction. Also, unlike in the present case in *Beaudoin* the court found the balance of convenience favoured the religious groups. The court in *Beaudoin* stated:

68 I am left to wonder what would be achieved by the issuance of an injunction in this case. If it were granted and not adhered to, would the administration of justice yet again be brought into disrepute because the B.C. Prosecution Service considers that it would not be in the public interest to prosecute those who refused to adhere to the orders sought from this Court?

69 When asked, counsel for the respondents said that the respondents accept that the petitioners' beliefs are deeply held, but in response to my question as to why an injunction was sought, responded that while the petitioners and others like them are not dissuaded from their beliefs and practices by the impugned orders, an order from this Court is more likely to accomplish their compliance.

70 Given the other remedies available to the respondents, **I have reservations that an injunction alone, without enforcement by the B.C. Prosecution Service, would overcome the deeply held beliefs of the petitioners and their devotees.** Taking into account the decision in *Sager*, and the other means of enforcement open to the respondents, I find that the balance of convenience does not favour the respondents in this case, and dismiss their application for an injunction.

109. In the case presently before your Lordship, Justice Norton found that the balance of convenience favoured the Province.⁷ The Supreme Court's original finding must be afforded deference and was supported by the evidence presented to the court on May 14, 2021. No evidence has been provided by the CCLA that could cause your Lordship on a re-hearing to overturn Justice Norton's finding of fact. It is not this court's role on a re-hearing to replace judicial findings absent new evidence or a clear and palpable defect in the original proceeding when viewed objectively would likely have changed the outcome of the original application.
110. Also, unlike *Beaudoin* contempt proceedings in Nova Scotia would not be brought by the Public Prosecution Service in this Province because it is a civil matter. Contempt proceedings would be brought by the Nova Scotia Department of Justice and initiated by a civil litigator on behalf of the Attorney General of Nova Scotia. In the civil context, whether a Court Order has been breached is a matter of evidence - policy pertaining to when criminal proceedings may be initiated do not apply. Moreover, in the Attorney General's respectful submission whether the *quia timet* injunction would be enforced if it were issued is irrelevant to whether the Attorney General met the legal test for a *quia timet* injunction in the circumstances of Nova Scotia's battle against the COVID-19 pandemic.

⁷ See paras. 26 to 32 of Justice Norton's written Decision.

111. Issue number one of the CCLA's motion is unsustainable. The CCLA has not demonstrated that the Injunction Order was not supported by the evidence and the CCLA has not established that the court exceeded its jurisdiction in granting the injunction.

ISSUE 2: 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. This discretion has been exercised no less than five times in the last 30 days.

ISSUE 3: The Injunction Order applies until varied by the Court, without limitation.

112. In response to issues number two (2) and three (3) the Province submits that Dr. Strang has jurisdiction to issue Public Health Orders under s. 32 of the *Health Protection Act* and amend the conditions or restrictions contained in the Public Health Orders.

113. Dr. Strang may exercise his discretion at any time and amend the Public Health Order based on the relevant epidemiology data pertaining to COVID-19, which could include data pertaining to the number of active COVID-19 cases, hospitalizations, the number of people currently in hospital due to COVID-19, or the number of vaccinations administered to Nova Scotians.

Public Gathering Restrictions

114. The *Communicable Diseases Regulations* made under the *Health Protection Act* permit the Chief Medical Officer of Health ("CMOH") to limit settings in which a person may attend and permits the CMOH to limit public gatherings. Section 6 and 8 of the *Communicable Diseases Regulations* set out the following:

Medical officer may restrict person from certain settings

6. If a medical officer has reason to believe that a person has or may have a communicable disease, the medical officer may restrict the person from being in settings where they may place others at risk of infection.

Medical officer may prohibit public gatherings

8. In addition to the requirements that a medical officer may include in an order under clause 32 93) (a) of the Act, a medical officer **may prohibit public gatherings for the purpose of controlling the transmission of a communicable disease for such period of time as the medical officer believes to be necessary or advisable.**

[*Communicable Diseases Regulations* made under s. 74 and 106 of the *Health Protection Act*]

115. As indicated earlier in these submissions a reopening plan has begun to be implemented and was announced by the Province on May 28, 2021. The plan will be implemented in Five (5) Phases and the Public Health Order will be amended from time to time to reflect the change of restrictions inclusive of gathering limits. The Attorney General submits that amending the Public Health Order to reflect changing COVID-19 conditions to lift restrictions while managing the risk to health posed by COVID-19 to Nova Scotians is lawful, authorized under statute, reasonable, and necessary in the context of the current pandemic. The incorporation of a statutory authorized power into a Court Order is not unlawful or in excess of the Supreme Court of Nova Scotia's inherent jurisdiction.
116. Furthermore, issue number two, with respect to Dr. Strang's authorized discretionary powers, does not provide a basis to vary or discharge the Injunction Order prohibiting illegal public gatherings and the activities that cause illegal gatherings to occur within the Province. The available evidence shows that widespread public masking, in addition to other public health measures, such as reducing time spent indoors with large groups of people (relative to the size of the room and the spacing of people within the room) while engaging in high-risk activities, can contribute to controlling the overall transmission of SARS-CoV-2. In addition, outdoor gatherings must also include measures such as restricted gatherings, and physical distancing and masking in order to prevent COVID-19 transmission.⁸
117. Dr. Strang ought to be afforded deference, as the Chief Medical Officer of Health ("CMOH") for the Province, with respect to his decisions pertaining to what measures should be contained in the Public Health Order to protect public health. It is not the role of this Honourable Court to second guess or replace what it views as adequate health measures. The court is not the public health expert, Dr. Strang is.
118. With respect to issue number three (3) any person may apply to vary the injunction order without limitation, pursuant to paragraph nine (9) of the Injunction Order. An injunction is an equitable remedy and the Supreme Court's inherent jurisdiction permits flexibility to vary or discharge the injunction on evidence accordingly. Issue number three (3) fails to disclose a basis to vary or discharge the injunction, as alleged by the CCLA, or otherwise.

ISSUE 4. 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*

⁸ Dr. Strang affidavit (paras. 13 to 19 in particular) and supplemental affidavit (paras. 18 to 45 in particular).

Constitutional and Legislative Framework

119. Sections 24(1) and 52(1) of the *Constitution Act* read as follows:

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

120. Under authority of the *Emergency Management Act*, the Government of Nova Scotia declared a state of emergency on March, 22, 2020 to help contain the spread of COVID-19. The provincial state of emergency continues to be in effect and may be renewed, pursuant to section 19 of the *Emergency Management Act*:

Termination within fourteen days and renewal:

19 (1) A state of emergency terminates fourteen days after the day on which it was declared unless it is renewed or terminated by the Minister.

121. State of emergency measures are precautionary, preventative steps, made in the best interests of Nova Scotians. The state of emergency gives government the powers and flexibility it needs to help protect people and enforce self-isolation and social distancing measures. The *Health Protection Act* authorizes police to enforce state of emergency orders, inclusive of Public Health Orders issued under the *Health Protection Act*.⁹

122. Dr. Strang's duties as the Chief Medical Officer of Health ("CMOH") include implementing measures necessary to protect the public health. The duties and powers of the CMOH are outlined in section 14 of the *Health Protection Act* (hereinafter, the "HPA"). The duty imposed on all medical officers to protect public health is set out in section 8:

Medical officers to protect public health

8 (1) Medical officers may take such reasonable actions as they consider necessary in the circumstances to protect the public health including the issuance of public health advisories and bulletins.

⁹ *Health Protection Act* – see sections 24, 37, 58, 60, 95, and 96 in particular "enforcement powers" and section 6 and 8 of the *Communicable Diseases Regulations* made under s. 74 and 106 of the *Health Protection Act*.

123. Section 32 (1) of the *HPA* authorizes the CMOH to issue Public Health Orders as follows:

32 (1) Where a medical officer is of the opinion, upon reasonable and probable grounds, that:

(a) a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease;

(b) the communicable disease presents a risk to the public health; and

(c) the requirements specified in the order are necessary in order to decrease or eliminate the risk to the public health presented by the communicable disease, the medical officer may by written order require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

124. With respect to restrictions contained in Public Health Orders section 2 of the *HPA* sets out the following:

Restrictions on private rights and freedoms limited

2 Restrictions on private rights and freedoms arising as a result of the exercise of any power under this Act shall be no greater than are reasonably required, considering all of the circumstances, to respond to a health hazard, notifiable disease or condition, communicable disease or public health emergency.

125. As the CMOH, Dr. Strang may exercise direction to grant an exception to any term and condition of the Public Health Order and the Public Health Order remains in effect until notice is provided by Dr. Strang under the authority of the *HPA*.

126. In order to prevent the spread of COVID -19 in Nova Scotia, the CMOH issued Public Health Orders that restricted indoor and outdoor gatherings, as well as those in private residences, and mandated the wearing of masks.

127. The Public Health Order (effective May 13, 2021) established requirements for physical distancing, gathering limits, mask and face coverings in Part II:¹⁰

**PART II
PHYSICAL DISTANCING,
GATHERING LIMITS,
MASKS AND FACE COVERINGS**

13A Effective 8:00a.m. May 14, 2021, except where otherwise stated in this Order the requirements for physical distancing, gathering limits, masks and face coverings apply to all persons present and residing in Nova Scotia.

13. All persons present and residing in Nova Scotia must maintain physical distancing of 2 metres (6 feet).

¹⁰ Part II Physical Distancing, Gathering Limits, Masks and Face Coverings; Public Health Order, effective May 13, 2021 – See Hayley Critchton's Supplemental Affidavit, Exhibit "G".

13.1 All persons present and residing in Nova Scotia must not participate in any gatherings, whether indoors or outdoors, unless subject to a specific exception set out in this Order.

13.2 Notwithstanding sections 13 and section 13.1:

(a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing same the household, and are not required to practice physical distancing and masking; and

(b) where the number of persons living in the same household is 2 persons or less, they may gather together indoors with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing and masking; and

13.3 Notwithstanding section 13.1, persons from one household may gather outdoors with persons from another household to engage in an outdoor activity such as a walk or play but must adhere to the physical distancing requirements of section 13.

13.4 Notwithstanding sections 13.1 and 13.2 and for greater certainty, parties to a child sharing arrangement, or an order or agreement providing for joint custody:

(a) may facilitate and participate in such child sharing or custody arrangements between households,

but

(b) must adhere to the self-quarantine requirements established by the Chief Medical Officer of Health located at:

<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-child-custoday.pdf>

If a parent or child develops symptoms or tests positive for COVID-19.

13.5 For the purpose of section 13.6, an "illegal public gathering" is defined as a gathering that does not comply with the requirements of this Order, including:

(a) the attendance limits applicable to gatherings, whether indoors or outdoors;

(b) physical distancing requirements; and

(c) masking requirements.

13.6 For greater certainty, persons are prohibited from:

(a) organizing an in-person gathering, including requesting, inciting, or inviting others to attend an illegal public gathering;

(b) promoting an illegal public gathering via social media or otherwise; or

(c) attending an illegal public gathering of any nature, whether indoors or outdoors.

128. In the present case, the CCLA has not challenged the legislative competence of the Province to enact the HPA. The CCLA has also not challenged the constitutional validity of the Public Health Order and the restrictions set out in the Public Health Order regarding illegal public gatherings,

the definition of illegal public gatherings, and the prohibitions contained in s. 13.6, which are contained in paragraph 3 (a) (b) and (c) of the impugned Injunction Order.

129. My Lord, the Injunction Order is an Order issued by the Supreme Court of Nova Scotia. The Province applied to court for a *quia timet* injunction intended to prevent the spread of COVID-19, reduce the number of deaths from COVID-19, and to ensure compliance with the Public Health Order.

130. Pursuant to paragraph seven (9) a person may apply to court to vary or discharge the Injunction Order.

131. The CCLA has applied to court, on a re-hearing under Rule 22.06, to discharge the Injunction Order and set aside Justice Norton's decision because the CCLA contends the restrictions set out in paragraph s. 3 (a) (b) and (c) of the Injunction Order are unlawful and infringe freedom of expression, freedom of assembly, and liberty.

132. It appears that the CCLA position is that the Nova Scotia Supreme Court issued an illegal injunction which is in effect a government order and, as such *Charter* scrutiny applies. Because the Injunction Order may qualify as government action attracting *Charter* scrutiny, the Attorney General's response to issue number four is organized in reference to the following headings and questions:

- **What is Freedom of Speech?**
- **Section 2 (b) of the *Charter* – “The Law”**
- **Does paragraph 3 (a) and (b) violate s. 2 (b) of the Charter?**
- **Does paragraph 3 (c) violate s. 2 (c)**
- **Is the Injunction Order overbroad and violate s. 7 of the Charter?**

What is Freedom of Speech?

133. Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The term freedom of expression is usually used synonymously but, in the legal sense, includes any activity of seeking, receiving, and imparting information or ideas, regardless of the medium used.

134. The right to freedom of expression is recognized as a human right under article 19 of the *Universal Declaration of Human Rights* (UDHR) and recognized in international human rights law in the *International Covenant on Civil and Political Rights* (ICCPR). Article 19 of the UDHR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The version of Article 19 in the ICCPR later amends this by stating that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "[f]or respect of the rights or reputation of others" or "[f]or the protection of national security or of public order (order public), or of public health or morals".¹¹
135. Based on the foregoing, freedom of speech and expression may not be recognized as being absolute. Common limitations or boundaries to freedom of speech relate to libel, slander, obscenity, pornography, sedition, incitement, fighting words, classified information, copyright violation, trade secrets, food labeling, non-disclosure agreements, the right to privacy, dignity, public security, and perjury. Justifications for such limitations include the harm principle, proposed which suggests that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."¹²
136. Under international law, Canada is compelled to protect the freedom of expression of its citizens. Section 2(b) of the *Canadian Charter of Rights and Freedoms* (the "Charter") protects "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication". Freedom of speech is also stated as a human right and fundamental freedom in the *Canadian Bill of Rights*, sections 1(d) and (f).
137. In addition, article 20 (2) of the ICCPR requires states to prohibit "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Thus, many countries (including Canada) have enacted laws that limit certain types of expression, including speech that incites violence and hatred.

¹¹ Article 19(3) of the ICCPR allows certain restrictions on freedom of expression:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

¹² *On Liberty*, by John Stuart Mill Fourth Edition, London Longmans, Green, Reader and Dyer, 1869.

138. In Canada, freedom of expression is fundamental but not absolute, particularly when there are legitimate pressing and substantial concerns that may justify its inhibition. The meaning of a right or freedom guaranteed by the *Charter* must be understood in light of the interests it was meant to protect. When words intend to inflict harm to others, especially those belonging to minority groups, it is obvious that hate speech is incompatible to the purposive spirit of the *Charter*.
139. My Lord, the Attorney General submits that the Injunction Order engages the harm principle by prohibiting activity that causes illegal public gatherings to occur. Due to the correlation of COVID-19 transmission and close contact between individuals, the occurrence of illegal gatherings put vulnerable populations and all Nova Scotians at risk of contracting COVID-19.¹³ My Lord, Nova Scotians should be free from the harm or apprehension of harm that illegal gatherings cause and the Injunction Order is one tool that serves to minimize that harm.

Section 2 (b) of the *Charter* – “The Law”

140. Even though the CCLA has not challenged the constitutionality validity of the underlying Public Health Order and *HPA*, the Attorney General submits that for freedom of expression not to be subject to *Charter* scrutiny it usually only requires the government refrain from interfering with the exercise of the right. The traditional view, in colloquial terms, is that freedom of expression contained in section 2 (b) prohibits gags, but does not compel the distribution of “megaphones” (*Haig v. Canada*, [1993] 2 S.C.R. 995). In general, it is up to government to determine which forms of expression are entitled to special support and where the government chooses to provide a platform for expression, it must do so in a manner consistent with the *Charter*.
141. Section 2 of the *Charter* which is part of Canada’s Constitution, stipulates the following:
2. Everyone has the following fundamental freedoms:
- (a) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
142. Freedom of expression is understood in Canadian law as all non-violent activity intended to communicate a meaning. Any law or government action that has the purpose or effect of interfering with such an activity is a *prima facie* breach of freedom of expression. Although it is usually referred to simply as “freedom of expression”, s. 2(b) of the *Charter* guarantees freedom of thought, belief, opinion and expression. While restrictions on gatherings do not have the purpose of restricting communication of meaning, they can have that effect.

¹³ Dr. Strang affidavit, sworn May 12, 2021; Dr. Strang supplemental affidavit, sworn June 15, 2021.

143. Section 2(b) also protects the right to receive expression. It protects listeners as well as speakers: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 at para. 41.
144. In *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927 the Supreme Court of Canada established several key principles that guides the understanding of freedom of expression in Canada:
- “Expression” has both a content and a form.
 - Content is the meaning that is being conveyed by any expressive activity.
 - Expressive activities can come in many forms including through verbal speech, writings, music, or physical gestures. Even the act of being silent can convey meaning.
145. If the activity conveys meaning, it is considered expression under the *Charter*.
146. The Supreme Court of Canada continues to interpret freedom of expression broadly. However, section 1 of the *Charter* establishes that reasonable limits can be placed on the right if those limits are prescribed by law and can be demonstrably justified in a free and democratic society.
147. The protection of freedom of expression is premised upon fundamental principles and values that promote the search for and attainment of truth, participation in social and political decision-making and the opportunity for individual self-fulfillment through expression – see *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 976.
148. The Supreme Court of Canada has maintained that the connection between freedom of expression and the political process is “perhaps the linchpin” of section 2(b) protection (*R. v. Keegstra*, [1990] 3 S.C.R. 697; *Thomson Newspapers Co. v. Canada (A.G.)*, [1998] 1 S.C.R. 877; *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827).
149. Free expression is valued above all as being instrumental to democratic governance. The two other rationales for protecting freedom of expression — encouraging the search for truth through the open exchange of ideas, and fostering individual self-actualization, thus directly engaging individual human dignity — are also key values that form part of the section 2(b) analysis.¹⁴

Harmful and offensive content

150. Some views are illegal to express because it can cause harm to others. This category often includes speech that is both false and dangerous, such as falsely shouting “Fire!” in a theatre

¹⁴ Department of Justice, Charterpedia: Section 2(b) – Freedom of Expression, (last updated June 17, 2019).

and causing a panic. Justifications for limitations to freedom of speech often reference the "harm principle" or the "offence principle".

151. As previously stated when words intend to inflict harm to others, especially those belonging to minority groups, it is obvious that hate speech is incompatible to the purposive spirit of the *Charter*.

152. The *Charter's* guarantee of freedom of expression is not absolute. Restrictions on forms of expression that it has deemed to run contrary to the spirit of the *Charter*, such as hate speech, have been upheld given that the purpose of such expression is to prevent the free exercise of another group's rights.

Test for Infringement

153. The Supreme Court has adopted the following three-part test for analyzing freedom of expression cases under section 2(b) of the *Charter*:

- 1) Does the activity in question have expressive content, thereby bringing it within section 2(b) protection?;
- 2) Does the method or location of this expression remove that protection?; and
- 3) If the expression is protected by section 2(b), does the government action in question infringe that protection, either in purpose or effect? (*Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2; *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 S.C.R. 141; *Inwin Toy Ltd.*, supra.)

Scope of Protection

154. The Supreme Court of Canada has long instructed that courts are to take a generous and purposive approach to the interpretation of the rights and freedoms guaranteed by the *Charter*. The Supreme Court of Canada's purposive approach and "large and liberal" orientation to *Charter* guarantees ensures that all manner of expressive activities qualified for constitutional protection. Therefore, Canadian courts often find "a prima facie breach easily" due to its broad interpretative approach to section 2(b). For instance, the Supreme Court of Canada stated in *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2009 SCC 31, the following at paragraph 27:

27 This Court has long taken a generous and purposive approach to the interpretation of the rights and freedoms guaranteed by the *Charter*... It has not departed from this general principle in the context of s. 2(b)... An activity by which

one conveys or attempts to convey meaning will prima facie be protected by s. 2(b). Furthermore, the Court has recognized that s. 2(b) protects an individual's right to express him or herself in certain public places (*Comité pour la République du Canada-Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139 (S.C.C.) (airports); *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084 (S.C.C.) (utility poles); and *City of Montréal*, at para. 61 (city streets)). Therefore, not only is expressive activity prima facie protected, but so too is the right to such activity in certain public locations (*City of Montréal*, at para. 61).

(i) Expressive Content

155. Expression protected by section 2(b) has been defined as “any activity or communication that conveys or attempts to convey meaning” (*Thomson Newspapers Co.*, supra; *Irwin Toy Ltd.*, supra). The courts have applied the principle of content neutrality in defining the scope of section 2(b), such that the content of expression, no matter how offensive, unpopular or disturbing, cannot deprive it of section 2(b) protection (*Keegstra*, supra). Being content-neutral, the *Charter* also protects the expression of both truths and falsehoods (*Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610 at paragraph 60).
156. Freedom of expression also protects the right not to express oneself. “[F]reedom of expression necessarily entails the right to say nothing or the right not to say certain things. Silence is in itself a form of expression which in some circumstances can express something more clearly than words could do” (*Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at paragraph 95).

(ii) Method of expression

157. Expression that takes the form of violence is not protected by the *Charter* (*Irwin Toy Ltd.*, supra at paragraph 43). The Supreme Court has held that whether or not physical violence is expressive, it will not be protected by section 2(b) (*Keegstra*, supra; *Irwin Toy Ltd.*, supra). Threats of harm also fall outside the scope of section 2(b) protection – see *Greater Vancouver Transportation Authority*, supra, at para. 28. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at paragraphs 107-108; *R v Khawaja*, 2012 SCC 69 at paragraph 70). In other respects, the form or medium used to convey a message is generally considered part and parcel of the message and included within section 2(b) protection (*Weisfeld v. R.*, [1995] 1 F.C. 68, at paragraph 41).

(ii) Location of expression

158. Section 2(b) protection does not extend to all places. Private property, for example, will fall outside the protected sphere of section 2(b) absent state-imposed limits on expression, since state action is necessary to implicate the *Charter*.¹⁵

Does the law or government action at issue, in purpose or effect, restrict freedom of expression?

(i) Purpose

159. Where the purpose of a government action is to restrict the content of expression, to control access to a certain message, or to limit the ability of a person who attempts to convey a message to express him or herself, that purpose will infringe section 2(b) (*Irwin Toy Ltd.*, supra; *Keegstra*, supra).

(ii) Effect

160. Even if a purpose is compatible with section 2(b), an individual may be able to demonstrate that the effect of the government action infringes his or her section 2(b) right. In this situation, the individual must show that his or her expression advances one or more of the values underlying section 2(b), e.g., participation in social and political decision making, the search for truth and individual self-fulfillment (*Irwin Toy Ltd.*, supra at para. 54). While more recent Supreme Court decisions still refer to this principle of showing the effect of government action, the Supreme Court of Canada does not appear to apply with a great deal of vigor the requirement that an individual show an advancement of values, tending instead to easily find a restriction of section 2(b).

161. My Lord, in the case at bar, the Attorney General submits that being able to express promote, attend, organize, incite, request, or invite illegal public gatherings contrary to the Injunction Order, causing actual, threatened, or an apprehension of harm to vulnerable groups and Nova Scotians, is contrary to the values section 2(b) of the *Charter* is meant to be protect (ie. fostering self-actualization engaging human dignity etc.).¹⁶ Also, such expression prevents the free exercise

¹⁵ Ibid (note 6) Department of Justice, Charterpedia: Section 2(b) – Freedom of Expression, (last updated June 17, 2019).

¹⁶ Affidavit of Hayley Crichtley:

Worldwide Rally for Freedom and Democracy is a global movement and organizer that has been developed with the explicit objective of spreading anti-mask, anti-vaccine, anti-restrictions, and anti-lockdown rhetoric (Hayley Crichton's affidavit, para. 1).

In Nova Scotia, participation in the Worldwide Rally for Freedom and Democracy global events are organized by the local Facebook group "Freedom Nova Scotia". The Freedom Nova Scotia Facebook open group has a total of 896 followers and the related Instagram account has 100 followers (Hayley Crichton's affidavit para 8).

On March 20, 2021, Freedom Nova Scotia organized an open event on Facebook to rally against mask wearing and restrictions. Attendees gathered in a large group of approximately 100 people, the attendees were not wearing masks and were not maintaining

of another group's rights such as Nova Scotians wanting to be free of lockdowns and restrictions caused by increased rates of COVID-19 community spread and transmission.

162. As set out in the Province's Notice of Application in Chambers (*Ex Parte*) the grounds submitted by the Province for the injunction is to ensure compliance with the provisions of the *HPA* and to authorize law enforcement to engage in enforcement measures to ensure compliance with the provisions of the Public Health Order made under s. 32 of the *HPA*. For the reasons set out above the Supreme Court had jurisdiction to grant the *quia timet* injunction as a matter of public safety and pursuant to the court's inherent jurisdiction that was not removed by the *Health Protection Act* or by any other statute. Moreover, the Attorney General submits that the Injunction Order serves a pressing and substantial objective of reducing the risk of COVID-19 spread; flattening the curve and moving out of the third wave of COVID-19 in Nova Scotia.

163. My Lord, if the Injunction Order infringes s. 2 (b) it is clearly saved by section one (1) of the *Charter* for the reasons that follow below.

Section 1 and section 2 (b) of the Charter

164. Section one (1) of the *Charter* stipulates the following:

Rights and freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

165. As part of the section 1 analysis, courts must determine whether the limit on the right is "prescribed by law," "reasonable," and "demonstrably justified" (applying the test the Supreme Court of Canada established in *R. v. Oakes*, and the law must have a pressing and substantial objective.[22] Section 1 considerations in relation to s. 2 (b) of the *Charter* have been accurately described as follows:

The broad scope of section 2(b) means that in most cases the constitutionality of the legislation or the government action will depend on the section 1 analysis. Generally speaking, because of the importance of the right to free expression, "any attempt to restrict the right must be subjected to the most careful scrutiny" (*R v. Sharpe* 2001 SCC

six feet of physical distance, in direct contravention of the Public Health Order. The event drew media attention (Hayley Crichton affidavit para. 9).

Freedom Nova Scotia has also organized rallies in the greater Halifax area on March 28, 2021 (Spring Garden Road), April 1, 2021 (Aldemey Landing) and May 1, 2021 (Halifax). The rallies were in contravention of the Public Health Order (Hayley Crichton affidavit para. 11).

Historical public gatherings organized by Freedom Nova Scotia have not complied with the requirements of COVID-19 Emergency Health Orders issued under section 32 of the *Health Protection Act* (Hayley Crichton affidavit para. 13).

2, supra at paragraph 22). However, the “degree of constitutional protection may vary depending on the nature of the expression at issue . . . the low value of the expression may be more easily outweighed by the government objective” (*Thomson Newspapers Co.*, [1998] 1 S.C.R. 877 at para. 91; *R. v. Lucas*, [1998] 1 S.C.R. 439, at paragraphs 116 and 121; *Sharpe*, at paragraph 181; *Whatcott*, 2013 SCC 11 supra at paragraphs 147-148; *R v. Butler*, [1992] 1 S.C.R. 452 at page 1150)). For example, limits are easier to justify where the expressive activity only tenuously furthers section 2(b) values, such as in the case of hate speech, pornography or marketing of a harmful product (*Keegstra* [1990] 3 S.C.R. 697; *Whatcott*, supra; *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232 ; *JTI MacDonald Corp.*, [2007] 2 S.C.R. 610 supra). Limits on political speech will generally be the most difficult to justify (*Thomson Newspapers Co* [1998] 1 S.C.R. 877 ; *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827). Restrictions will also be more difficult to justify where they capture expression that furthers artistic, scientific, educational or other useful social purposes (*Butler*, [1992] 1 S.C.R. 452).

Whether the limit minimally impairs the right to freedom of expression is often the deciding factor in section 2(b) cases. A total prohibition on a form of expression will be more difficult to justify than a partial prohibition (*RJR-MacDonald Inc.*, [1995] 3 S.C.R. 199 ; *JTI-MacDonald Corp.* supra, *Toronto Star Newspapers Ltd.*, supra). A restriction on expression backed by a civil penalty rather than a criminal sanction such as imprisonment will be considered a less impairing alternative (*R. v. Zundel*, [1992] 2 S.C.R. 731; *Taylor v. Canada (Human Rights Commission)*, [1990] 3 S.C.R. 892). Where the limit on freedom of expression is minimal, the court may, in certain circumstances like elections advertising, accept section 1 justifications for this limit based on logic and reason without supporting social science evidence (*B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6).

166. In Canada, freedom of expression is fundamental but not absolute, particularly when there are legitimate pressing and substantial concerns that may justify its inhibition.
167. If a violation by the government or other institution of the *Charter* takes place, the courts have to decide whether this violation has a rationale. In order to do so, the courts have to look into the objectives and actions of the government, or other institution, against the interests of the individual who is claiming the violation. Under section 52 of the *Constitution*, a law may be found to be unconstitutional and declared invalid, or may be found to be constitutional, and a person's *Charter* right may therefore be restricted by it.
168. In the present case, the incorporation of section 1 in the *Charter* proves that freedom of expression, which is a basic right, may be limited when its exercise causes harm to the public interest or the rights of others.

Does the Injunction Order infringe s. 2 (b) of the *Charter*?

169. In answering this question the Attorney General submits the following questions must be considered:

1. Does organizing an in person gathering, including requesting, inciting, or inviting others to attend an “Illegal Public Gathering” have expressive content bringing them within the s. 2 (b) protection?

2. Does promoting an Illegal Public Gathering via social media or otherwise have expressive content bringing these activities within the s. 2 (b) protection?

170. The Attorney General maintains that the right of expression to express anti-lockdown rhetoric, organize, request, incite, promote, or invite others to breach gathering limits in contravention of the Public Health Order causes harm (actual or threatened) to vulnerable groups and Nova Scotians generally. The harm was established through the evidence of Dr. Strang who was qualified as an expert in the field of Public Health and Preventative Medicine relative to Sars CoV2 and COVID-19 by Justice Norton, at paragraph seven (7) of his written decision.

171. The Attorney General acknowledges that the freedom to exchange ideas, express religious beliefs, and speak out against government action is an integral factor enabling citizens to be active participants in a healthy and vibrant democracy. However, when that expression incites people to break the law, increases the risk of spread of a deadly disease and creates an apprehension among Nova Scotians that COVID-19 may spread into their communities, it is not protected expression. The Attorney General reiterates that while the global pandemic is still with us this is not the time to disregard public health in favour carrying out acts and omissions that increase the risk of harm (spread of COVID-19) within the population.

172. Furthermore, the Attorney General would disagree that the expressive form and location in the present case is protected under s. 2 (b).

173. As the majority said in *Montreal City v. 2952-1366 Quebec Inc.*, [2005] 3 S.C.R. 141, the first two questions relate to whether the expression at issue falls within the protection of s. 2 (b). The court said expressive content is always protected but the form or location may not be protected:

57 The first two questions relate to whether the expression at issue in this case falls within the protected sphere of s. 2(b). They are premised on the distinction made in *Irwin Toy* between content (which is always protected) and “form” (which may not be protected). While this distinction may sometimes be blurred (see, e.g. *Irwin Toy*, p. 968; *Ford c. Québec (Procureur général)*, [1988] 2 S.C.R. 712 (S.C.C.), at p. 748), it is useful in cases such as this, where method and location are central to determining whether the prohibited expression is protected by the guarantee of free expression.

174. In relation to the first question, of whether anti-lockdown rhetoric, organizing, requesting, inciting, promoting, inviting, or attending illegal public gatherings in contravention of the Injunction Order, contains expressive content, the answer is yes. This is not in issue.
175. The message and activity of expressing anti-lockdown rhetoric, organizing, requesting, inciting, promoting, inviting, or attending illegal public gatherings in contravention of the Injunction Order can be expressive activity. This is not disputed by the Attorney General. The question is whether the expression is excluded from s. 2(b) protection, due to its form or location, despite the presumptive protection, as the Supreme Court of Canada noted in *Montreal City (supra)*:

58 ... The fact that the message may not, in the view of some, have been particularly valuable, or may even have been offensive, does not deprive it of s. 2(b) protection. Expressive activity is not excluded from the scope of the guarantee because of its particular message. Subject to objections on the ground of method or location, as discussed below, all expressive activity is presumptively protected by s. 2(b): see *Irwin Toy*, at p. 969; *R. v. Keegstra*, [1990] 3 S.C.R. 697 (S.C.C.), at p. 729.

Location

176. In *Montreal City (supra)*, the Supreme Court of Canada discussed the decision in the prior Supreme Court of Canada case of *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139, commenting that it contained two countervailing arguments regarding expression on public property. It then noted that a majority of judges supported the general approach that some government-owned property has never been viewed as available space for public expression and that it cannot have been the intention of the drafters of the *Charter* to confer a *prima facie* right of free expression in these essentially private spaces:

64 The argument against s. 2(b) protection on at least some government-owned property, by contrast, focuses on the distinction between public use of property and private use of property. Regardless of the fact that the government owns and hence controls its property, it is asserted, many government places are essentially private in use. Some areas of government-owned property have become recognized as public spaces in which the public has a right to express itself. But other areas, like private offices and diverse places of public business, have never been viewed as available spaces for public expression. It cannot have been the intention of the drafters of the *Canadian Charter*, the argument continues, to confer a *prima facie* right of free expression in these essentially private spaces and to cast the onus on the government to justify the exclusion of public expression from places that have always and unquestionably been off-limits to public expression and could not effectively function if they were open to the public.

65 In *Committee for the Commonwealth of Canada*, six of seven judges endorsed the second general approach, although they adopted different tests for determining whether the government-owned property at issue was public or private in nature. Lamer C.J., supported by Sopinka and Cory JJ., advocated a test based on whether the primary

function of the space was compatible with free expression. McLachlin J., supported by La Forest and Gonthier JJ., proposed a test based on whether expression in the place at issue served the values underlying the s. 2(b) free speech guarantee. L'Heureux-Dubé J. opted for the first approach and went directly to s. 1.

[Emphasis added]

177. While unnecessary to determine the outcome of the merits of the case in *Montreal City*, the court agreed with the majority in *Committee for the Commonwealth of Canada*, and stated **that the application of s. 2(b) is not attracted by the mere fact of government ownership of the place in question but that there must be a further enquiry to determine if this is a type of property that attracts s. 2(b) protection (para. 71)**. The majority took a broad categorical approach, focusing on the character of the location or place and its suitability for expression. The court adopted a principled basis for “method” or “location” based exclusion from s. 2(b) protection, noting that the onus is on the claimant:

74 The basic question with respect to expression on government-owned property is whether the place is a public place where one would expect constitutional protection for free expression on the basis that expression in that place does not conflict with the purposes which s. 2(b) is intended to serve, namely (1) democratic discourse, (2) truth finding and (3) self-fulfillment. To answer this question, the following factors should be considered:

(a) the historical or actual function of the place; and

(b) whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.

178. In *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2009 SCC 31, the court again adopted the analytical framework developed in *Montreal City (supra)*, for determining whether the expression should be denied s. 2(b) protection on the basis of location.

179. The Attorney General submits that the primary method of organizing, inciting, requesting, promoting illegal public gatherings has been through the internet, specifically Freedom Nova Scotia's Facebook page. In assessing whether a method or location conflicts with the values protected by s. 2(b), being self-fulfillment, democratic discourse and truth-finding, the majority in *CBC v. Canada*, 2011 SCC 2 at para. 37, stated that in deciding whether a location is excluded from *Charter* protection, in keeping with the analytical framework from *Montreal City*, and *Canadian Federation of Students*, the court must consider the historical or actual function of the location of the activity or the method of expression, and whether other aspects of the location or the method suggest that expression at that location or using that method would undermine the values underlying free expression.

180. The Attorney General will now turn to the analytical framework set out by the Supreme Court of Canada. The Attorney General will first address the historical or actual function of the place and then whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.

Historical or Actual Function and Other Aspects of the Space

181. The majority in *Montreal City (supra)*, highlighted the importance of addressing the historical or actual function of the space:

75 The historical function of a place for public discourse is an indicator that expression in that place is consistent with the purposes of s. 2(b). In places where free expression has traditionally occurred, it is unlikely that protecting expression undermines the values underlying the freedom. As a result, where historical use for free expression is made out, the location of the expression as it relates to public property will be protected.

76 Actual function is also important. Is the space in fact essentially private, despite being government-owned, or is it public? Is the function of the space — the activity going on there — compatible with open public expression? Or is the activity one that requires privacy and limited access? Would an open right to intrude and present one's message by word or action be consistent with what is done in the space? Or would it hamper the activity? Many government functions, from cabinet meetings to minor clerical functions, require privacy. To extend a right of free expression to such venues might well undermine democracy and efficient governance.

77 Historical and actual functions serve as markers for places where free expression would have the effect of undermining the values underlying the freedom of expression. The ultimate question, however, will always be whether free expression in the place at issue would undermine the values the guarantee is designed to promote. **Most cases will be resolved on the basis of historical or actual function. However, we cannot discount the possibility that other factors may be relevant. Changes in society and technology may affect the spaces where expression should be protected having regard to the values that underlie the guarantee. The proposed test reflects this, by permitting factors other than historical or actual function to be considered where relevant.**

78 The markers of historical and actual functions will provide ready answers in most cases. However, we must accept that, on the difficult issue of whether free expression is protected in a given location, some imprecision is inevitable. As some scholars point out, the public-private divide cannot be precisely defined in a way that will provide an advance answer for all possible situations: see, e.g. R. Moon, *The Constitutional Protection of Freedom of Expression* (2000), at pp. 148 *et seq.* **This said, the historical and actual functions of a place is something that can be established by evidence. As courts rule on what types of spaces are inherently public, a central core of certainty may be expected to evolve with respect to when expression in a public place will undermine the values underlying the freedom of expression.**

[Emphasis added]

182. There are a number of cases that address the question of whether the location in question has been historically used as an arena or forum for public discussion or political debate. The British

Columbia Court of Appeal in *R. v. Breeden*, 2009 BCCA 463, considered whether s. 2(b) was applicable to protest signs at a fire station, a courthouse, and a municipal hall. The majority noted that the relevant considerations include the historic use of the area where the activity is occurring and whether the activity in question interferes with the proper functioning of the facility (para. 19). In concluding that these were not locations protected by s. 2(b), the court said:

20 What appears to me a key feature of the present case is that there is no evidence in the record suggestive of the use of the locations in question as forums for advertising (commercial speech) or places of debate (political speech). Accordingly, unlike *Canadian Federation of Students*, here this Court must decide whether to afford access for expressive activities in locations where a government entity has never previously recognized such a right. See *Canadian Federation of Students*, para. 45. The Fire Station premises are clearly not amenable to or suitable for such activities and if the appellant does not acknowledge this in argument, he but faintly submits anything to the contrary.

21 That leaves for consideration the other two venues, the courthouse and the municipal hall. **While it is clear that council chambers in municipal halls are utilized from time to time for public hearings and debate, the evidence in this case does not furnish support for the proposition that the foyer area of the West Vancouver municipal hall has been utilized for purposes of discussion and debate.** It was open to the trial judge on the evidence to conclude that the sort of activity sought to be engaged in by the appellant was out of accord with the historic use of the space and that the continuance of such activity would tend to undermine the use of the premises by staff and members of the public for the orderly conduct of public business.

22 Courthouses have a vital role to play in the operation and furtherance of the rule of law: see *B.C.G.E.U., Re*, [1988] 2 S.C.R. 214, 53 D.L.R. (4th) 1 (S.C.C.); and *Société Radio-Canada c. Québec (Procureur général)*, 2008 QCCA 1910, 62 C.R. (6th) 99 (Que. C.A.), leave to appeal to S.C.C. granted, (S.C.C.). **As was the case concerning the municipal hall, the evidence before the trial judge did not afford support for the proposition that advertising or political debate has historically occurred in the public areas of courthouses.** I should say that there is debate and discussion in the courtrooms of courthouses but such location is a very structured and specialized forum to allow courts to perform their historic function of deciding legal controversies. **The activities of the appellant were out of accord with the historical use of courthouse premises and, as the trial judge found, would interfere with the effective functioning of the courts as an institution.** At bottom, the appellant seeks to engage in a polemical or political type of protest to further his aims or objects. That is wholly at odds with the historic function and operation of court premises which are dedicated to the resolution of disputes between parties by legal process.

[Emphasis added]

183. The majority in *R. v. Breeden*, 2009 BCCA 463 (*supra*), placed considerable significance on the historical function of the locations and particularly whether they had previously been used “as open forums for public discussion and debate”. A similar conclusion was reached by the Québec Court of Appeal in *Société de transport de la Communauté urbaine de Montréal v. Robichaud*, 1997 CarswellQue 186, where Justice Fish (as he then was) for the majority expressed serious

doubts whether freedom of expression is constitutionally protected in the corridors and transit areas of a subway station:

28 These subway facilities can in my view not be assimilated, either by analogy or extension, to the 'arenas' or 'forums' traditionally open to private petition or public debate. **They are built and maintained for the exclusive benefit of those who have paid a fare to secure a service. Their purpose is to provide a pedestrian passageway for travelers only. These defining characteristics are in my view sufficient to exclude them from the ambit of public property upon which freedom of expression is constitutionally protected.**

184. The Ontario Divisional Court in *Vietnamese Association of Toronto v. Toronto*, [2007] O.J. No. 1510, reached a similar conclusion in finding that a flagpole in Nathan Phillips Square was not public property to which the public historically had access, even though the City's Flag Policy allowed use of the flagpole by community and non-profit groups to mark important events.

19 The flagpole is not like an airport or a public street **to which the public has unimpeded access** as in *Comité pour la République du Canada - Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139 (S.C.C.) or the *Montreal* case above. **The flagpole is of a different nature, and its use is regulated, because the flags flown can and without question are perceived, rightly or wrongly, as the expression of the City's perspective and approval.**

[Emphasis added]

185. In the present case, any argument that the prohibition of promotion on social media infringes individual rights of freedom of expression under the *Charter* – s. 2 (b), is unsustainable. As set above, part of the legal analysis is that the court must determine if the method of expression is a public space or a private space. Typically, only government owned public property is afforded freedom of expression protection under the *Charter*. There are exceptions but the Attorney General submits that none apply in this case.

186. The Supreme Court of Canada has found corridors and transit areas of a subway station to be private because you have to pay a fare, and the flag pole in Nathan Phillips Square in Toronto was found to be private since the municipal government regulates what may be placed on the pole. If the method of expression is **private or exclusive** it may not be afforded protection under s. 2(b). The Attorney General submits that the internet in the context of this case (Facebook/social media) is private and exclusive. More often than not there is a fee for service, and not everyone can access the internet (i.e. low income individuals are less likely to have access to the internet).

187. The internet may be public in the sense that it may be used by the public for a variety of purposes. However, access is more often than not restricted to those who can afford to pay a fee for service. In that sense the internet is analogous to a subway station as in *Breeden* (above). Just because an individual posts on Facebook access may be limited and available to only those paying a fee for internet access or by some other means. Access to the internet may be restricted and not accessible to everyone. An individual cannot go into an internet website created by another person and change the internet website, in that sense an internet domain or website of an individual is private and they may exclude others from interacting with them through the internet.
188. The Attorney General submits that the internet is not an inherently public space. The exclusivity and how you can access the internet does not make it a historical public forum in furtherance of *Charter* values. If the Attorney General is incorrect in that regard then in the present case the actual use of the forum being organizing, requesting, inciting, promoting, inviting, or attending illegal public gatherings in contravention of the Injunction Order and Public Health Order, is contrary to the values that s. 2(b) is meant to protect, because such expression causes actual or threatened harm (spread of a deadly disease) to vulnerable groups and Nova Scotians.¹⁷ The available science outlined in Dr Strang's evidence unequivocally draws a causal connection between exceeding gathering limits established under the Public Health Order and COVID-19 transmission.
189. Restrictions on internet use is not unprecedented. The Attorney General notes that the *Criminal Code* provides for various offences associated with use of the internet (i.e. child pornography, terrorist activities, voyeurism to name a few).

Other Aspects of the Place

190. Inherently, some places are not meant to be public and should remain outside the protected sphere of s. 2(b). Simply because the Respondent, Freedom Nova Scotia has allowed very limited expressive activity on its Facebook public forum domain, does not mean open access and protection under s. 2(b). Justice Deschamps, writing for the majority, said in *Montreal City*, that s. 2(b) is not without its limits, and governments will not be required to justify every restriction on expression under s. 1. She said that the method or location of the expressive activity may exclude it from protection.
191. The majority in *Montreal City*, while noting that the "method or location" test reflects the fact that our jurisprudence requires broad protection at the s. 2(b) stage, said it also reflects the fact that

¹⁷ Dr. Strang affidavit and supplemental affidavit.

some places must remain outside of the protection of s. 2(b). The court noted that restricted access to many government-owned venues is part of our history and our constitutional tradition and that the *Charter* was not intended to turn this state of affairs on its head:

79 ... it also reflects the reality that some places must remain outside the protected sphere of s. 2(b). People must know where they can and cannot express themselves and governments should not be required to justify every exclusion or regulation of expression under s. 1. As six of seven judges of this Court agreed in *Committee for the Commonwealth of Canada*, **the test must provide a preliminary screening process. Otherwise, uncertainty will prevail and governments will be continually forced to justify restrictions which, viewed from the perspective of history and common sense, are entirely appropriate.** Restricted access to many government-owned venues is part of our history and our constitutional tradition. The *Canadian Charter* was not intended to turn this state of affairs on its head.

[Emphasis added]

192. The location in the present case, is not static and may be the internet, social media, verbal or non-verbal communication, or other mediums. However, the harm inflicted by the content of the expression is the same. Promoting, organizing, inciting, requesting inviting, or attending, illegal social gatherings in the context of the Injunction Order is activity that causes illegal gatherings. The acts set out in the Injunction Order if permitted create harm, these acts create an apprehension of harm and actual harm to Nova Scotians, the harm being the transmission and spread of COVID among the population and another wave of high COVID-19 cases and another lockdown for all Nova Scotians. In the context of a pandemic affecting public health the restrictions are reasonable and appropriate. The nature of the content of the expression is not consistent with s. 2 (b) values and is not protected under s.2(b).

IF THE INJUNCTION ORDER INFRINGES SECTION 2 (b), IS THE INFRINGEMENT JUSTIFIED UNDER SECTION 1 OF THE *CHARTER* IN RESPONSE TO THE COVID-19 PANDEMIC?

193. The Attorney General reiterates that the Respondents and the public's right to freedom of expression is not absolute. However, the Attorney General would agree that if government is to infringe a *Charter* right, if it is going to tell a citizen such as the Respondents and all Nova Scotians that they cannot organize an in person gathering, including requesting, inciting, or inviting others to attend an "Illegal Public Gathering"; promote an illegal public gathering via social media or otherwise; or attend an illegal public gathering of any nature whether indoors or

outdoors as set out in the Injunction Order and Public Health Order, it had better have a very good reason. In legal terms that "very good reason" finds its expression in s. 1 of the *Charter*.¹⁸

194. The yardstick by which the restrictions set out in the Injunction Order is to be measured are the values and principles essential to a free and democratic society. As the Supreme Court of Canada observed in *R. v. Oakes* [1986] 1 S.C.R. 103, the rights and freedoms guaranteed by the *Charter* are not absolute and there may be "circumstances where their exercise would be inimical the realization of collective goals of fundamental importance" (at para. 68).
195. The Attorney General argues that in the case at bar there are "**collective goals of fundamental importance**" which must prevail over the right to illegally gather in contravention of the Injunction Order and Public Health Order, namely the protection of others from the spread of COVID-19.
196. On the other hand, the CCLA argues that the restrictions are overbroad, that they subject all Nova Scotians to an arbitrary standard, that they put people's liberty at risk of being imprisoned for contempt, and make people liable under the Injunction Order even if they use their best efforts to comply with the Public Health Order, and cannot be justified under s. 1 of the *Charter*. In response, the Attorney General reiterates that imprisonment and fines are also possibilities for individuals who contravene the Public Health Order, and that Order has gone unchallenged by the CCLA in this proceeding. As set out above, the fact that enforcement measures may be instituted under the Public Health Order does not prevent this Honourable Court from issuing an injunction that further protects public safety, where measures under the Public Health Order may prove inadequate. This Honourable Court did not err in law in issuing the Injunction Order, as alleged by the CCLA.
197. As stated above the Injunction Order is a valid court order in furtherance of a valid statutory scheme intended to protect public health. How the Injunction Order is enforced and its validity will withstand *Charter* scrutiny until the statutory scheme is set aside or challenged as was the case in *Beaudoin*.
198. My Lord, the Injunction Order was a necessary measure to control COVID-19. The Injunction Order can be justified under s. 1 of the *Charter* based on the evidentiary record in this case.

Context

¹⁸ Section 1 of the *Charter* stipulates: 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

199. The Attorney General will begin the s. 1 analysis with considering the context of the Injunction Order, and the nature of the problem it was intended to address. Context has been described as the "indispensable handmaiden" to the section 1 analysis. As Justice Gonthier stated for the majority in *Thomson Newspapers Co. v. Canada (Attorney General)* [1998] 1 S.C.R. 877 (S.C.C.) (at para. 87):

87. The analysis under s.1 of the *Charter* must be undertaken with a close attention to context. This is inevitable as the test devised in *R. v. Oakes*, [1986 1 S.C.R. 103 (S.C.C.)], requires a court to establish the objective of the impugned provision, which can only be accomplished by canvassing the nature of the social problem which it addresses. Similarly, the proportionality of the means used to fulfil the pressing and substantial objective can only be evaluated through a close attention to detail and factual setting. In essence, context is the indispensable handmaiden to the proper characterization of the objective of the impugned provision, to determining whether that objective is justified, and to weighing whether the means used are sufficiently closely related to the valid objective so as to justify an infringement of a *Charter* right.

200. Contextual factors are directed towards determining whether or not, given the nature of the case, evidence will consist of "approximations and extrapolations" and therefore to what extent arguments based on logic and reason will be accepted as a foundational part of the s. 1 case (*R v. Bryan*, 2007 SCC 12, at para. 29).

201. In *Harper v. Canada (Attorney General)*, 2004 SCC 33 (S.C.C.), Justice Bastarache observed that the "**legislature is not required to provide scientific proof based on concrete evidence of the problem it seeks to address in every case**" (*Harper*, at para. 77). In the absence of determinative scientific evidence, the court is entitled to rely "**on logic, reason and the application of common sense to what is known**" (*Harper*, at para. 78).

202. At issue in *Harper* was whether the spending limits in s. 350 of the *Canada Elections Act*, S.C. 2000, c.9 infringed the right to free expression in s. 2 (b) of the *Charter*. The majority, led by Justice Bastarache, concluded that the infringement was demonstrably justified under s. 1 of the *Charter*. For the majority the "central issue" in the s. 1 analysis was "**the nature and sufficiency of the evidence** required by the Attorney General to justify the infringement (at para. 76):

76 This is not the first time the Court has addressed the standard of proof the Crown must satisfy in demonstrating possible harm. Nor is it the first time that the Court has been faced with conflicting social science evidence regarding the problem that Parliament seeks to address. Indeed, in *Thomson Newspapers*, supra, this Court addressed the nature and sufficiency of evidence required when Parliament adopts a regulatory regime to govern the electoral process. The context of the impugned provision determines the type of proof that a court will require of the legislature to justify its measures under s. 1; see *Thomson Newspapers*,

at para. 88. As this pivotal issue affects the entire s. 1 analysis, it is helpful to consider the contextual factors at the outset.

[emphasis added]

203. Justice Bastarache, in *Harper* (supra), then proceeded to consider the applicable contextual factors under four categories:

- (i) the nature of the harm and the inability to measure it;
- (ii) vulnerability of the group;
- (iii) subjective fears and apprehension of harm; and
- (iv) nature of the infringed activity.

204. With respect to the above noted contextual considerations outlined in *Harper*, the Attorney General seeks to add deference to Dr. Strang, Chief Medical Officer of Health (“CMOH”), the Province of Nova Scotia, and the institutional capacity of the courts.

(i) The Nature of the Harm and the Inability to Measure it

205. The nature of the harm caused by COVID-19 is unfortunately all too real. It is a severe acute respiratory illness that kills Nova Scotians and people across all age groups, races, ethnic backgrounds, gender, countries, and classes. There are characteristics which increase the complexity of public health decision making in the case of COVID-19. It is a novel virus and the illness caused by it is far more severe than observed in influenza. Infected, but asymptomatic persons, may unwittingly infect others.¹⁹

206. Dr. Strang’s evidence explains the challenges faced by those with the responsibility for public health decision making in the context of a pandemic such as COVID-19. In the context of such a public health emergency, with emergent and rapidly evolving developments, the time for seeking out and analyzing evidence shrinks. Where the goal is to avert serious injury or death, the margin for error may be narrow. In such a circumstance, the response does not allow for surgical precision. Rather, in public health decision making the “precautionary principle” supports the case for action before confirmatory evidence is available.

(ii) Vulnerability of the Group

207. Nova Scotia has an aging population. Those in the age group of being 65 years and older are more likely to be hospitalized and admitted to ICU even without other co-morbidities. However,

¹⁹ Dr. Strang affidavit.

COVID-19 can have serious health consequences no matter your age.²⁰ Effectively, every Nova Scotian is part of the vulnerable group. Every individual's response to the COVID-19 infection is different and potentially deadly.

208. Gathering restrictions were imposed at the very beginning of Nova Scotia's implementation of public health measures to stop the spread of COVID-19. Since March 2020, the gathering limits have fluctuated as the Province engaged in lockdown measures and then reopened.

(iii) Subjective Fears and Apprehension of Harm

209. It is stating the obvious but given the potential for serious illness or death from COVID-19, there is a heightened fear of contracting this illness within the population. The CCLA may submit that there is no evidence of this in the record but that would be an absurd and academic position to put before this court. Judicial notice may be taken that in a global pandemic that is killing people such fear and apprehension exists within the population.

(iv) Nature of the Infringed Activity

210. In this case the activity infringed is set out in paragraph three (3) of the Injunction Order is follows:

The Respondent and any other person acting under their instruction or in concert with the Respondent independently to like effect and with Notice of this Order, shall be restrained anywhere in the Province of Nova Scotia from:

- a. organizing an in person gathering, including requesting, inciting, or inviting others to attend an "Illegal Public Gathering";
- b. promoting an Illegal Public Gathering via social media or otherwise;
- c. attending an Illegal Public Gathering of any nature whether indoors or outdoors as set out in the Public Health Orders, as amended, and issued by Dr. Robert Strang, Chief Medical Officer of Health, under section 32 of the *Health Protection Act*.

211. The infringement of a right to attend illegal public gatherings, inclusive of engaging in activities that cause illegal public gatherings to occur, in contravention of the Public Health Order is fleeting. Nova Scotia will likely move into Phase 3 of the Province's reopening on June 30th and restrictions on gathering are continuing to ease. If the phased plan is successful Nova Scotia could return to fully opened before 2022. Moreover, it was always the Province's intention to continually reassess the need for the Injunction Order based on the COVID-19 data existing at

²⁰ Dr. Strang affidavit and supplemental affidavit.

the time. This is evidenced by the Province's motion to lift the injunction that was granted by the court on June 22, 2021.²¹

(v) Role of the Chief Medical Officer of Health (CMOH) and the Institutional Capacity of the Court

212. An examination of context is essential in deciding whether or not deference is appropriate. However, deference itself is not to be determined at the outset of the s. 1 inquiry, but rather, where appropriate, under the various steps in the s. 1 analysis (*M. v. H*, [1999] 2 S.C.R. 3 at paras.80-81).

The Section 1 Test for Infringement

213. The Attorney General will now address the specific requirements which must be met in order to justify the infringement of a *Charter* right.

214. The onus of proving that a limit or freedom guaranteed by the *Charter* meets the criteria of s. 1 rests upon the party seeking to uphold the limitation, the Province in this case. The standard of proof is the civil standard, namely proof on balance of probabilities. A tipping of the scales.

215. Two central requirements must be met in order to establish that a limit is reasonable and demonstrably justified in a free and democratic society.

216. First, the objective which the measures responsible for a limit on a *Charter* right or freedom are designed to serve must be of sufficient importance to warrant overriding the right or freedom.

217. Second, if a sufficiently important objective is identified, the party invoking s. 1 must establish that the means chosen are reasonable and demonstrably justified (see *Oakes*, paras. 73 - 74).

218. This second requirement involves a form of proportionality test, where in each case the court is required to "balance the interests of society with those of individuals and groups" (*Oakes*, at para. 74). There are three components to this inquiry. First, the measures adopted must be rationally connected to the objective.

219. Second, the means chosen must impair as little as possible the right or freedom in question. Sometimes referred to as the least drastic means, or minimum impairment, the law should impair the right no more than is necessary to accomplish the desired objective.

²¹ Dr. Strang supplemental affidavit. See also, Motion and Order discharging the injunction granted on June 22, 2021 on file herein.

220. Third, there must be proportionality between the effects of the measures and the objective. With regard to this third criteria, in order to be reasonable and demonstrably justified, the more severe the deleterious effects of a measure the more important must be the objective (*Oakes*, at para. 74, 75). As such, even if the objective is of sufficient importance, the measures rationally connected and the impairment a minimum, it remains possible that the severity of the deleterious effects will not be justified by the purposes it is intended to serve (*Oakes*, at para. 75).

221. Turning now to an application of these criteria to the case at hand.

Does the Injunction Order Relate to a Pressing and Substantial Objective?

222. The first step in the s. 1 analysis is to determine whether the objectives of the law are of sufficient importance to warrant the limitation of the constitutional right, the right to freedom of expression. Is the objective of the law, the stopping the spread of COVID-19 in this context, pressing and substantial?

223. The express purpose of prohibiting illegal gatherings and the activity that cause illegal gatherings to occur contained in the Injunction Order and the Public Health Order is "to prevent the spread of COVID-19 in Nova Scotia".

224. The gathering restrictions are to protect the health of Nova Scotia residents by limiting the spread of COVID-19, ensuring the continued functioning of the health-care system; limiting the amount of future deaths due to the virus.

225. The gathering restrictions have been proven to control the spread of COVID-19, by "flattening the curve", such that COVID-19 infections can be controlled to a level that aims to ensure the proper functioning of the health care systems and where Nova Scotians are not subject to an unreasonable level of risk of contracting this deadly disease.

226. During the third COVID-19 wave gathering restrictions contributed to reducing COVID-19 case numbers and hospitalizations in the Province and assisted in containing further community spread of the virus.²²

227. With the greatest respect to the CCLA, its position misapprehends the objective of the Injunction Order. Having the Public Health Order in effect does not make the Injunction Order unnecessary.

228. If a person breaches the Injunction Order the Injunction Order provides for the same penalties in a proceeding for contempt of court that could have been imposed for a breach of the *Public*

²² Dr. Strang supplemental affidavit.

Health Order. This is true. However, the powers of the court in contempt proceedings permit a tailored approach for deterrence that may be directed to the specific offender. The court may impose imprisonment but may impose conditions against the offender to ensure that breaches of the Public Health Order that endangers public health are prevented.

229. It is entirely logical to put measures in place such as the Injunction Order in addition to the Public Health Order to control the types of activity that can occur in the Province to stop the spread of COVID-19.
230. The objective of the Injunction Order was not to interfere with Nova Scotia residents' rights, but to protect those in Nova Scotia from illness and death arising from the spread of COVID-19 caused by gatherings and reduce COVID-19 infections. While pressing and substantial objectives are not limited to emergencies (*P.S.A.C. v. Canada*, [1987] 1 S.C.R. 424 (S.C.C.)) the existence of COVID-19 as a public health emergency is beyond question.
231. There can be no doubt that the goal of the restrictions set out in section 13 of the Public Health Order and paragraph 3 (a) (b) and (c) of the Injunction Order is reducing COVID-19 spread in Nova Scotia. This is a pressing and substantial objective.

Is there a Rational Connection between the Objective and Infringement of the Right?

232. A rational connection prevents limits from being imposed on rights arbitrarily. The requirement to abide by gathering restrictions and the public health measures incorporated into the Injunction Order, is tailored to suit its purpose.
233. In the present case the Attorney General submits that it is reasonable to find based on the evidence of the CMOH, Dr. Strang, that the restrictions contained in the Injunction Order would further the goal of reducing cases of COVID-19 infection, not that it is guaranteed to do so (*Hutterian Brethren of Wilson Colony v. Alberta*, 2009 SCC 37 (S.C.C.), at para. 48).
234. The CCLA argues that the Attorney General has failed to show why the Public Health Order is insufficient to stop the spread of COVID-19 or why the Injunction Order should apply to everyone in the Province; and submits that the Public Health Order has successfully worked at reducing COVID-19 case numbers.
235. Even though the Attorney General accepts that there are other measures which have proven successful in the fight against COVID-19, he does not agree that these measures render the Injunction Order unnecessary, such that it is not rationally connected to combating the spread of the disease.

236. The Attorney General submits that while empirical evidence is not necessary to establish a rational connection, the Attorney General has provided convincing evidence of the effectiveness of the restrictions and prohibited activities that cause illegal public gatherings to occur as set out in paragraph 3 (a) (b) and (c) of the Injunction Order. After the Injunction Order was issued on May 14, 2021 certain anti mask rallies scheduled for May 15, 2021 were cancelled whereas previously rallies were carried out in willful violation of the Public Health Order.²³
237. After the issuance of the Injunction Order case numbers fell and the Province is moving into phase 3 of its reopening plan, hospitalizations have decreased and gathering restrictions have relaxed.
238. Based on the evidentiary record, and the evidence of Dr. Strang particularly, it is beyond argument that the Injunction Order and the restrictions and prohibitions contained therein were an effective means for reducing the spread of COVID-19 in Nova Scotia in addition to the Public Health Order. The Injunction Order was rationally connected to its objective.

That the Means Chosen Interfere as Little as Possible with the Protected Right

239. This component of the *Oakes* test requires that the law not impair the right any more than is necessary to achieve its desired objective.
240. The fact that prohibiting illegal public gatherings and the activities that cause those gatherings to occur is rationally connected to reducing the spread of COVID-19 in Nova Scotia does not necessarily mean that it is the least drastic means for doing so. Here, as throughout the s. 1 analysis, the onus is on the Attorney General to establish that the other measures taken are not an effective substitute for the Injunction Order, or that the Injunction Order itself cannot be tweaked to accommodate a less intrusive infringement on freedom of expression.
241. The court is required to inquire into whether there are reasonably feasible and less impairing alternatives to achieve the same objective. At the same time, the Attorney General argues that the Province must be afforded a degree of flexibility in crafting a solution to the spread of COVID-19. As Justice LaForest explained in *R v. Videoflicks Ltd.* [1986] 2 S.C.R. 713 (para. 214):

Given that the objective is of pressing and substantial concern, the Legislature must be allowed adequate scope to achieve that objective. It must be remembered that the business of government is a practical one. The Constitution must be applied on a realistic basis having regard to the nature of the particular area sought to be regulated and not on an abstract theoretical plane. In interpreting the Constitution, courts must be sensitive to what Frankfurter J. in *McGowan*, *supra*, at p. 524 calls "the practical living

²³ Hayley Crichton affidavit and supplemental affidavit.

facts" to which a legislature must respond. That is especially so in a field of so many competing pressures as the one here in question.¹¹⁵

[emphasis added]

242. In the Attorney General's respectful submission, the Supreme Court must tread carefully when conducting this analysis as, with the benefit of hindsight, it is always possible for imaginative counsel to posit alternatives. As Justice Binnie observed in *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66 (S.C.C.) "resourceful counsel, with the benefit of hindsight, can multiply the alternatives" (at para. 96). This is particularly true when it comes to the management of a public health emergency such as COVID-19.
243. The court must consider the role of deference to the CMOH, the Province, and the institutional capacity of the court.
244. While the Injunction Order has legal force, it is in essence an Order based on medical and public health evidence directed towards protecting the health of Nova Scotia residents. The qualifications of the CMOH to make public health decisions are not challenged. In the exercise of his authority Dr. Strang draws upon specialized resources at his disposal. This team approach is conducive to informed decision making based on the best medical evidence available. Dr. Strang and his public health team guide the Province's path forward to re-opening the Province while still combating COVID-19 spread.
245. To this the Attorney General would add that the courts do not have the specialized expertise to second guess the decisions of public health officials or the Province.
246. In the context of the COVID-19 pandemic Chief Justice Roberts of the Supreme Court of the United States, for the majority, had the following to say regarding deference and the role of the judiciary (*South Bay United Pentecostal Church v. Newsom*, Doc. 19A1044 (U.S. Sup. Ct. May 29, 2020) at p. 1):

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts "[t]he safety and the health of the people" to the politically accountable officials of the States "to guard and protect." *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905). When those officials "undertake [] to act in area fraught with medical and scientific uncertainties," their latitude "must be especially broad." *Marshall v. United States*, 414 U.S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an "unelected federal judiciary," which lacks the background, competence, and expertise to assess public health and is not accountable to the people See *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 545 (1985).

247. While the CCLA may argue that while some measure of deference to the decisions of Dr. Strang or the Province is appropriate, the court must not abdicate its responsibility as guardian of the Constitution and rule of law. The Attorney General would agree.
248. The CCLA may also argue that while the case law supports deference to the provincial legislature, in this case the Public Health Order implemented by a single, unelected individual, and that because special measures (restrictions contained in the Public Health Order in this context) are neither debated nor approved by the legislative assembly, somehow detracts from the validity of the Injunction Order is untenable.
249. With respect, this argument ignores two key considerations; first, it was the legislature that saw fit to bestow the special measures powers on the CMOH in the first place; second, these powers are only activated in times of a declared public health emergency. On such occasions there may be little time for legislative debate, assuming of course that the emergency was such that the legislature could convene to do so in the first place.
250. The Attorney General would accept any argument made by the CCLA that the pandemic is not a magic wand which can be waved to make constitutional rights disappear and that the decision of the CMOH is not immunized from review.
251. However, it is not an abdication of the court's responsibility to afford the CMOH and the Province an appropriate measure of deference in recognition of (1) the expertise of the CMOH Office and (2) the sudden emergence of COVID-19 as a novel and deadly disease and global pandemic. It is also not an abdication of responsibility to give due recognition to the fact that the CMOH, and those in support of that office, face a formidable challenge under difficult circumstances.
252. In considering whether or not the Injunction Order could have been less intrusive, the court should exercise caution in recognition of the fact that the public health response to COVID-19 is ever evolving. The implementation of restrictions in paragraphs 3 (a) (b) and (c) of the Injunction Order must be gauged from the circumstances as they existed on May 14, 2021 and what was known about COVID-19 at the time.
253. The evidence of Dr. Strang amplifies the "precautionary principle" in public health decision making. In the context of the COVID-19 pandemic, with the prospect of serious illness or death, the margin for error is small. In such a circumstance, the public health response is to err on the side of caution until further confirmatory evidence becomes available; the "precautionary principle". Applying public health measures across the population is often a more effective means than trying to target smaller at risk sub groups. Public health goals are rarely achieved through

single actions or simple tools. A range of mechanisms may be employed, depending on the health problem and context.

254. Relying on the evidence of Dr. Strang, the Attorney General submits that there is no simple one size fits all solution to the effective management of a pandemic such as COVID-19. A variety of public health measures are required in combination.
255. A multi-pronged provincial approach that will address control of importation of COVID-19, enhanced testing, rapid case identification and contact tracing along with strategies to maintain physical distancing will undoubtedly lead to the best health outcomes. However, the relative prioritization of each of these measures will differ, due to regional differences in infection levels and disease spread, vulnerability of the provincial populations, and regional characteristics that influence the effectiveness of public health measures.

[Dr. Strang, Affidavit]

256. In May 2021 prohibiting illegal public gatherings was one of a number of special measures implemented by the CMOH in an effort to stop the spread of COVID-19. The Province was, at that time, in a state of lockdown with the closure of institutions, and non-essential business. With few exceptions individuals were required to self-isolate for 14 days. Enhanced testing for COVID-19 was available to those with symptoms of the disease. Social distancing of six feet was, and remains the rule. Public health officials employed contact tracing as a means of tracking the infection in the population and social gathering restrictions limited to households among other restrictions were enforced. Notwithstanding these efforts there were numerous unknown people within the population that wanted to hold illegal public gatherings while in the worst wave of COVID-19. An additional measure had to be taken to protect the public and that additional measure was the *quia timet* injunction granted by this Honourable Court on May 14, 2021.
257. The COVID-19 pandemic presents as a moving target and as a consequence the necessity of the Injunction Order and Public Health Order was regularly reassessed.
258. Based on the foregoing evidence pertaining to an enemy as resilient as COVID-19 will not be kept in check through the approach advocated by the CCLA. The task of wrestling this disease into submission is no easy feat and is one that requires a dynamic and multipronged approach. The Injunction Order is integral to that approach since it provides for elevated penalties, pursuant to Civil Procedure Rule 89, for those who may choose to willfully breach the Public Health Order.
259. The Attorney General submits that the least drastic means component of the *Oakes* test has been satisfied.

260. There has been no violation of s. 2 (b) of the *Charter*.

Do the Statutory Effects of the Measure outweigh its Deleterious Effects?

261. This stage involves balancing the objective sought by the Injunction Order with the infringement on expression. Arguably, this has already been done in determining whether the impugned objective is sufficiently pressing to warrant overriding the *Charter*.

262. The application of s. 1 in this instance involves a balancing of expression rights with protection of health of the population. The Attorney General references the U.S. Supreme Court decision in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (U.S. Sup. Ct. 1905) as illustrative of a circumstance where individual rights were found to give way to the common good. At issue was a constitutional challenge to a law passed by Cambridge, Massachusetts, imposing compulsory smallpox vaccinations in response to an increase in that disease in the city.

263. In response to the argument that compulsory vaccination is "hostile to the inherent right of every freeman to care for his own body and health in such a way as to him seems best", the court observed that real liberty could not exist in a circumstance where each individual operates regardless of the injury that may be done to others, and "**there are manifold restraints to which each person is necessarily subject for the common good**" (at p. 3).

264. This step in the proportionality analysis asks whether the harm done by restricting illegal public gatherings and the activities that cause such gatherings to occur benefits the public through the prevention, or at least reduction of COVID-19 in the Province. To ask the question, is to answer it.

265. While restrictions on being able to express violating Public Health Orders and participating in illegal public gatherings may cause mental anguish, anger, and frustration, to some, the collective benefit to the population as a whole must prevail. COVID-19 is a virulent and potentially fatal disease. In the circumstances of this case the right to engage in expression that causes illegal public gatherings to occur and the right to attend illegal public gatherings must give way to the common good. The CCLA takes issue with the fact that the Injunction Order applies to all Nova Scotians, in response the Attorney General submits that the evidence of COVID-19 transmissibility necessitates that it applies to all Nova Scotians. Moreover, it is impossible for the Province to know which one of its residents will decide to attend illegal public gatherings or engage in activities that include inciting, promoting, and requesting illegal public gatherings, or acting in concert with other proponents of illegal public gatherings.

266. Again, it is important to note that the CCLA has not challenged the constitutional validity of the underlying Public Health Order which contains the same prohibitions that are set out in paragraph 3 (a) (b) and (c) of the impugned Injunction Order issued by the Supreme Court. The fact that the CCLA has not challenged the underlying Public Health Order is fatal to the CCLA's motion given that this Honourable Court's inherent jurisdiction runs concurrent to the provisions of the *Health Protection Act*. The Injunction Order is a valid court order that furthers a valid statutory scheme pertaining to public health.

Conclusion with Respect to Section 1 of the Charter

267. Based on the evidence presented the Injunction Order represents a reasonable limit on the right of freedom of expression, as demonstrably justified in a free and democratic society.

Section 2 (c)

268. Section 2 (c) sets out the following:

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly

269. The Attorney General concedes there is an infringement of the right to assemble contrary to the gathering limits set out in the Public Health Order but the infringement is saved by section 1.

Pressing and Substantial Objective

270. The objective of the social gatherings restrictions is to stop the spread of COVID-19. That objective is pressing and substantial.

Proportional

271. There is a rational connection evidenced by Dr. Strang's affidavit evidence relative to the characteristics of COVID-19, how it spreads, the public health measures implemented to curb the spread of the virus, and the impact on Nova Scotia's health care systems, economies, and people.

272. The restriction is minimally impairing in that the means chosen do not impair the right as is reasonably necessary to meet the objective. Not all gatherings are prohibited, just those that present an increased risk of COVID spread, namely close contact with groups of people exceeding the gathering limits and each individual's households.
273. The benefits of the restrictions outweigh the harm of the infringement. The Province has begun to reopen in a measured way. Activity that hampers the reopening by exceeding gathering limits risks another wave of COVID-19 and a reversion back to the restrictions implemented at the beginning of May 2021. The impugned objective (stopping COVID-19 spread) is sufficiently pressing to warrant overriding the *Charter* right under s. 2 (c).
274. The Attorney General submits that Dr. Strang reasonably balanced the restriction on assembly with protection of public health at the time he first imposed the social gathering restrictions and on an ongoing basis thereafter when extending them.
275. Any infringement on the right to assembly is saved by s. 1 of the *Charter*.

Section 7 of the *Charter*

276. The CCLA sets out the following additional issues:

ISSUE 5. 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.

ISSUE 6. 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.

ISSUE 7. 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.

277. With respect to issues 5, 6, and 7 the Attorney General submits that these grounds engage section 7 *Charter* rights, namely liberty.

Section 7

(v) Section 7 of the *Charter*

278. There are two stages to an analysis under s. 7. First, the applicant must establish that the impugned governmental act imposes limits on a "life", "liberty" or "security of the person" interest, such that s. 7 is "engaged". If the first step is met, the applicant must then establish that this

“deprivation” is contrary to the “principles of fundamental justice”: Canada (Attorney General) v. Bedford, 2013 SCC 72 at para. 57.

279. The principles of fundamental justice include the principles against arbitrariness, overbreadth and gross disproportionality. The deprivation of a right will be arbitrary and thus violate s. 7 if it bears no real connection to the law’s purpose (in this case, public health). The deprivation of a right will be overbroad if it goes too far and interferes with some conduct that bears no connection to its objective. Finally, the deprivation of a right will be grossly disproportionate if the seriousness of the deprivation is so totally out of sync with the objective that it cannot be rationally supported: *Bedford (supra)*.

280. The Attorney general concedes that an individual’s liberty interest is affected by the Injunction Order but that it is saved by s. 1. The limitations contained in the Injunction Order meet the objective of stopping COVID-19 spread, it is proportional in that the least intrusive measures have been employed to meet the objective – some social gatherings are permitted but others that pose great risk of COVID-19 transmission are not (i.e. interacting with people outside of your household or individuals of consistent contact), the gathering limits are rationally connected to the purpose of stopping COVID-19 spread, and the benefits of prohibiting illegal public gatherings and the activities that cause illegal gatherings to occur, curbing the spread of COVID-19, outweigh the right to gather in large numbers in close contact, or engage in activities that cause people to gather in large numbers to occur – large numbers being those numbers that exceed the gathering limits set out in the Public Health Order.

ISSUE 5: 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.

281. With respect to issue number five (5), the Attorney General submits that the Injunction Order is not arbitrary.

282. The revised Public Health Order, dated May 13, 2021, includes restrictions on gatherings, Persons living in the same household could gather together outdoors or indoors but social gathering exceeding the following limits were not permitted.

13.2 Notwithstanding sections 13 and section 13.1:

- (a) persons living in the same household may gather together, whether indoors or outdoors, up to the maximum of the number of immediate family members residing in the same the household, and are not required to practice physical distancing and masking;

(b) where the number of persons living in the same household is 2 persons or less, they may gather together indoors with up to a maximum of 2 additional persons, who shall be 2 consistent persons, and they are not required to practice physical distancing and masking; and

283. The CCLA has not presented any evidence to contradict, or that refutes, the public health decision made by Dr. Strang to implement the above noted restrictions into the Public Health Order (as of May 13, 2021) and in the Injunction Order by reference. Dr. Strang determined that the above noted restrictions curb the spread of COVID-19. The court is not in the position to second guess or to question Dr. Strang's decision or the Public Health Order. COVID-19 is a virus that must be responded to based on the medical evidence. Close contact increases the risk of COVID-19 spread. It is logical and a matter of common sense that if you maintain only contact with a small group of people and if those close contacts remain covid free the risk of transmission or spread of the virus is reduced. Common sense applied in this case renders the gathering restrictions not arbitrary but clearly rationale and reasonable.

284. The Attorney General reiterates that the Injunction Order cannot be challenged as arbitrary when it is a valid court order that furthers a valid statutory scheme pertaining to public health and the Public Health Order has not be found to be unconstitutional. This ground is unsustainable on that basis along.

ISSUE 6: The Injunction Order is overbroad because it applies regardless of whether persons are making best-efforts to comply with public health orders.

ISSUE 7: 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;

285. With respect to issue number six (6), again the Attorney General reiterates that paragraph 3 (a) (b) and (c) of the Injunction Order incorporates the Public Health Order's provisions in s. 13.5 and 13.6 (effective May 13, 2021). The Injunction is a valid court order in furtherance of a valid statutory scheme. The Public Health Order is not challenged in this proceeding.

286. Moreover, there is a public health risk in engaging in activities that cause illegal public gatherings to occur. The evidence of Hayley Crichton evidenced the fact that social media and online resources were used to promote illegal public gatherings and in fact caused illegal public gatherings to occur. Anyone in the Province who engages in such activity puts all Nova Scotians at risk of contracting COVID-19.

287. The organizing of in person illegal public gatherings, requesting, inciting or inviting others to attend illegal public gatherings; promoting an illegal public gathering via social media or by other means is inextricably linked to illegal public gatherings. An analogy may be drawn to our neighbours south of the border. Former U.S. President Donald Trump did not attend the Capital insurrection on January 6, 2021 in Washington D.C. but may very well have been the catalyst for its occurrence.
288. Finally, the Attorney General submits that there is no evidence from the CCLA to refute Dr. Strang's Public Health Order and the restrictions regarding risk to public health. Deference should be afforded to Dr. Strang as the CMOH for the province in charge of the protection of public health in this Province. We are in a global pandemic and the majority of Nova Scotians are doing their part. Only a small few want to put others at risk by engaging in reckless activity of socially gathering in large numbers endangering the public health. Now is not the time to seek to overthrow measures and methods that are proven to stop the spread of COVID-19 under the guise of "rights advocacy". Public health is paramount in the context of fighting COVID-19.

Overbroad and Vagueness

289. With respect to issue number seven (7), the Supreme Court of Canada in *Reference re ss. 193 & 195.1(1)(c) of the Criminal Code* [1990] 1 S.C.R. 1123 wrote the following with respect to vagueness and overbreadth at para. 37 to 42

37 Before embarking on a review of the Canadian experience with the "void for vagueness" doctrine, I pause to note that the American jurisprudence distinguishes between vagueness and overbreadth. As Professor Tribe explains at p. 1033, although there is a parallel between the two concepts, "Vagueness is a constitutional vice conceptually distinct from overbreadth in that an overbroad law need lack neither clarity nor precision ..." A law that is overly broad sweeps within its ambit activities that are beyond the allowable area of state control, and in fact burdens conduct that is constitutionally protected. The proper approach to adopt in understanding the relationship between vagueness and overbreadth has been stated by Marshall J., speaking for the United States Supreme Court in *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 at 494-95, 71 L. Ed. 2d 362, 87 S. Ct. 408 (1982):

In a facial challenge to the overbreadth and vagueness of a law, a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail. The court should then examine the facial vagueness challenge and, assuming the enactment implicates no constitutionally protected conduct, should uphold the challenge only if the enactment is impermissibly vague in all of its applications.

The relationship between vagueness and overbreadth in Canadian law has been expressly addressed in *R. v. Zundel* (1987), 58 O.R. (2d) 129, 56 C.R. (3d) 1, 31 C.C.C. (3d) 97, 35 D.L.R. (4th) 338, 29 C.R.R. 349, 18 O.A.C. 161 (C.A.), in a decision rendered "By the Court", at pp. 125-26:

Vagueness and overbreadth are two concepts. They can be applied separately, or they may be closely interrelated. The intended effect of a statute may be perfectly clear and thus not vague, and yet its application may be overly broad. Alternatively, as an example of the two concepts being closely interrelated, the wording of a statute may be so vague that its effect is considered to be overbroad. Vagueness or overbreadth, for the purpose of determining the permissibly regulated area of conduct, and whether freedom of expression under s. 2(b) of the Charter has been breached, may be different from vagueness or overbreadth for the purpose of applying the criteria in *Oakes* as to the application of s. 1 of the Charter.

Further, the position in *Hoffman Estates* was adopted and followed by the Ontario Court of Appeal in *R. v. Morgentaler* (1985), 52 O.R. (2d) 353 at 387-88, 48 C.R. (3d) 1, 22 C.C.C. (3d) 353, 22 D.L.R. (4th) 641, 17 C.R.R. 223, 11 O.A.C. 81, reversed [1988] 1 S.C.R. 30, 63 O.R. (2d) 281, 62 C.R. (3d) 1, 37 C.C.C. (3d) 449, 44 D.L.R. (4th) 385, 31 C.R.R. 1, 26 O.A.C. 1, 82 N.R. 1.

38 It would seem to me that since the advent of the *Charter* the doctrine of vagueness or overbreadth has been the source of attack on laws on two grounds. First, a law that does not give fair notice to a person of the conduct that is contemplated as criminal is subject to a s. 7 challenge to the extent that such a law may deprive a person of liberty and security of the person in a manner that does not accord with the principles of fundamental justice. **Clearly, it seems to me that, if a person is placed at risk of being deprived of his liberty when he has not been given fair notice that his conduct falls within the scope of the offence as defined by Parliament, then surely this would offend the principles of fundamental justice.** Second, where a separate *Charter* right or freedom has been limited by legislation, the doctrine of vagueness or overbreadth may be considered in determining whether the limit is "prescribed by law" within the meaning of s. 1 of the Charter. In this regard I quote from the decision of Huges sen J. of the Federal Court of Appeal in *Luscher v. Can. (Dep. Min., Revenue Can., Customs & Excise)*, [1985] 1 F.C. 85 at 89-90, 45 C.R. (3d) 81, [1985] 1 C.T.C. 246, 9 C.E.R. 229, 17 D.L.R. (4th) 503, 15 C.R.R. 167, 57 N.R. 386:

In my opinion, one of the first characteristics of a reasonable limit prescribed by law is that it should be expressed in terms sufficiently clear to permit a determination of where and what the limit is. A limit which is vague, ambiguous, uncertain, or subject to discretionary determination is, by that fact alone, an unreasonable limit. **If a citizen cannot know with tolerable certainty the extent to which the exercise of a guaranteed freedom may be restrained, he is likely to be deterred from conduct which is, in fact, lawful and not prohibited.** Uncertainty and vagueness are constitutional vices when they are used to restrain constitutionally protected rights and freedoms. While there can never be absolute certainty, a limitation of a guaranteed right must be such as to allow a very high degree of predictability to the legal consequences.

See also *Re Information Retailers Assn. of Metro. Toronto Inc. and Metro. Toronto (Mun.)* (1985), 52 O.R. (2d) 449, 32 M.P.L.R. 49, 22 D.L.R. (4th) 161, 10 O.A.C. 140 (C.A.), and *R. v. Robson*, 45 C.R. (3d) 68, [1988] 6 W.W.R. 519, 28 B.C.L.R. (2d) 8, 31 M.V.R. 220, 19 C.C.C. (3d) 137, 19 D.L.R. (4th) 112, 15 C.R.R. 236 (C.A.).

39 As I understand it, this appeal was argued on the basis that the impugned sections of the *Criminal Code* violate s. 7 of the Charter because they subject an individual to a deprivation of liberty and security of the person in the form of potential imprisonment

and are allegedly impermissibly vague. Therefore I will proceed with my analysis on that basis. As I have stated above, in my view a law that is impermissibly vague and that has as a potential sanction the deprivation of liberty or security of the person offends s. 7 of the *Charter*. There is no dispute that the impugned sections have the potential to deprive one of liberty and security of the person upon conviction. What remains to be determined is whether the sections are impermissibly vague and thereby offend the principles of fundamental justice.

40 I begin by noting that the vagueness doctrine does not require that a law be absolutely certain; no law can meet that standard. I point to the introductory comments of the Law Reform Commission of Canada in respect of its draft Code (report 31, Recodifying Criminal Law (1987), at p. 2):

It [the draft Code] is drafted in a straightforward manner, minimizing the use of technical terms and avoiding complex sentence structure and excessive detail. It speaks, as much as possible, in terms of general principles instead of needless specifics and *ad hoc* enumerations.

In addition, the role of the courts in giving meaning to legislative terms should not be overlooked when discussing the issue of vagueness. The Ontario Court of Appeal in *R. v. Morgentaler*, *supra*, said the following at p. 388 [O.R.]:

In this case, however, from a reading of s. 251 with its exception, there is no difficulty in determining what is proscribed and what is permitted. It cannot be said that no sensible meaning can be given to the words of the section. Thus, it is for the courts to say what meaning the statute will bear.

Also, as the Ontario Court of Appeal has held in *R. v. LeBeau* (1988), 62 C.R. (3d) 157, 41 C.C.C. (3d) 163 at 173, (sub nom. *R. v. LeBeau*; *R. v. Lofthouse*) 25 O.A.C. 1, "the void for vagueness doctrine is not to be applied to the bare words of the statutory provision but, rather, to the provision as interpreted and applied in judicial decisions".

41 The fact that a particular legislative term is open to varying interpretations by the courts is not fatal. As Beetz J. observed in *R. v. Morgentaler* at p. 107 [S.C.R.]: "Flexibility and vagueness are not synonymous." Therefore the question at hand is whether the impugned sections of the Criminal Code can be or have been given sensible meanings by the courts. In other words, is the statute so pervasively vague that it permits a "standardless sweep", allowing law enforcement officials to pursue their personal predilections?: see *Smith v. Goguen*, 415 U.S. 566 at 575, 39 L. Ed. 2d 605, 94 S. Ct. 1242 (1974), and *Kolender v. Lawson*, 461 U.S. 352 at 357-58, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983)

290. The Attorney General submits that the Injunction Order is not overbroad or vague. The Public Health Order incorporated into the Injunction Order by reference clearly delineates what is an Illegal Public Gathering and what is not. It is not ambiguous, or indescribable that a person cannot hold a party with 30 people or carry out a protest in the streets of Halifax with 200 people at this moment in time while COVID-19 is still present in our communities without social distance or masking. Nor is the Injunction Order vague or overbroad such that if you are not someone who attends an illegal public gathering or in activity who's purpose is to cause an illegal public

gathering to occur you will not be subject to the Injunction Order or Public Health Order. If you are not in breach of the Public Health Order you will not be in breach of the Injunction Order. It is not vague or overbroad that gathering in numbers that exceed the gathering limits is not permitted under the Injunction Order and Public Health Order and meets the objective of protecting public health, which was proven in evidence by Dr. Strang.

291. Conversely, the Injunction Order is not vague or overbroad if the words in their everyday usage in paragraph 3 (a) (b) and (c), are read together with the definition of illegal public gatherings. The Injunction Order sets out that if you attend an illegal public gathering or if you organize an in person illegal public gathering, including requesting, inciting or inviting others to attend an illegal public gathering and that activity causes an illegal public gathering to occur you will be subject to the Injunction Order. Willful blindness is not a permissible defence regarding one's actions that objectively can be inferred to materially contribute to illegal public gatherings occurring within the Province in contravention of the Injunction Order.

292. The activity online or through other methods of inciting, organizing, requesting, and attending illegal public gatherings are causally linked to illegal public gatherings. The activity noted in paragraphs 3 (a) (b) and (c) of the Injunction Order was proven to cause people to attend illegal public gatherings evidenced by Hayley Crichton. It was the online presence of Freedom Nova Scotia that was used to tell people where and when to attend illegal public gatherings that breached the Public Health Order. There is a close nexus between the activity and the harm meant to be addressed by the Injunction Order (spread of Covid-19).

293. The evidence pertaining to the social media group Freedom Nova Scotia evidenced the following activities:

Historical public gatherings organized by Freedom Nova Scotia and others within the Province have not complied with the requirements of COVID-19 Emergency Health Orders issued under section 32 of the *Health Protection Act*, including but not limited to:

- a. masking requirements;
- b. attendance limits applicable to indoor or outdoor gatherings; and
- c. minimum physical distancing requirements.

294. The above noted activities, which was evidenced through Dr. Strang's affidavit, increases the risk of COVID-19 transmission and spread within the Province.

295. If it is found that the Injunction Order, in purpose or effect, infringes s. 7 of the *Charter* the Attorney General submits that the infringement can be justified under s. 1. Promoting “breaking the law” and threatening further COVID-19 spread, creating an apprehension of harm and actual harm to Nova Scotians, is not a constitutionally protected right.
296. As stated above the stop of covid spread is a pressing and substantial objective. The Injunction Order considers all rights and the rights of all Nova Scotians not to be exposed to an increased risk of COVID-19 transmission or another lockdown which is what illegal public gatherings cause.

Proportional

297. Setting gathering limits and a prohibition on illegal public gatherings and the activities that cause illegal public gatherings to occur is minimally impairing. Not all gatherings are prohibited just those that it has been deemed based on epidemiology evidence to increase the spread of COVID-19.
298. The objective of the Injunction Order is rationally connected to the public health measures.
299. The restrictions and prohibitions in the Injunction Order are minimally impairing in that the means chosen do not impair the right more than what is reasonably necessary to meet the objective. Not all gatherings or activities, online or otherwise, are prohibited just those that present an increased risk of COVID-19 spread.
300. Again, the benefits of the Injunction Order outweigh the harm of the alleged infringement.
301. Although, not on the same level of hate speech having regard to the harm principle, prohibiting individuals from engaging in activities that materially contribute to the occurrence of illegal public gatherings and prohibiting individuals from attending illegal gatherings is demonstrably justified and saved under s. 1 of the *Charter*.

Law Enforcement Powers under the Injunction

302. The Injunction Order permits law enforcement to enforce the Injunction Order in the same manner or in like effect as the Public Health Order. The only difference is the powers given to law enforcement to enforce contempt proceedings if an individual is found in breach of the Injunction Order. The rationale submitted by the Province for the Injunction Order and the potential for initiating contempt proceedings has already been set out above.

303. To date, based on the evidence of Hayley Crichton, law enforcement have engaged enforcement measures pertaining to illegal public gatherings by citing violators for breaching the Public Health Order and issuing Summary Offence Ticket.

304. The purpose and intent of the injunction was aimed at prohibiting any person from increasing the risk of COVID-19 transmission by attending an illegal public gathering or causing illegal public gatherings to occur within the Province. It was the intent of the Province to subject anyone who contravenes the Public Health Order to also be liable under the Injunction Order given that anti mask rally's persisted with increasing frequency despite enforcement activities being carried out under the Public Health Order.²⁴

If the Injunction Order CANNOT BE JUSTIFIED BY SECTION 1, SHOULD the Injunction Order be varied so that it is *Charter* compliant?

305. The Attorney General submits that any infringements are justified under section 1. However, in the alternative, the Attorney General requests that any declaration of invalidity be suspended to permit the Attorney General to submit variations to the Injunction Order in a manner that does not infringe *Charter* rights or if there is any infringement the variation is saved by s. 1. Given the importance and effectiveness of the Injunction Order at curtailing mass illegal public gatherings it is in the public interest to permit the Attorney General's request to submit a varied Injunction Order – if necessary.

Duration of the Injunction

306. Due to the unpredictable nature of COVID-19 spread it was not possible to provide an end date so long as the third wave and high daily case counts of COVID-19 persisted. As the Province moved out of the third wave and considered the most recent epidemiology data and risk mitigation strategies the necessity of the injunction was re-evaluated by Dr. Strang, the Premier and provincial health officials. On June 22, 2021, the Province moved for an Order discharging the injunction because the Premier in consultation with Dr. Strang determined that the injunction was no longer necessary.

307. All Nova Scotians are doing their part to protect their neighbour and family. The Injunction ensured compliance with the public health measures which are not indefinite. With increased vaccination rates and transmissibility declining public health measures will continue to evolve. However, the harm sought by the Injunction to prevent and reduce is still present and government

²⁴ Affidavit of Hayley Crichton, sworn May 12, 2021.

has utilized its exceptional powers to protect the public out of necessity not out of an intent to suppress *Charter* rights. Again, the Attorney General reiterates a person's right to protest or any other right is not infringed beyond what is reasonably necessary which can be justified under s. 1 given the state of emergency and the COVID-19 pandemic. Two neighbours can talk by standing six feet apart and wearing masks. The only right that may be infringed and saved by section 1 is the right to protest in unlimited numbers, unmasked, or to voice opposition to government action in a manner that increases the risk of COVID-19 transmission and spread. The CCLA argues no evidence exists to delineate activities that pose more risk than others but the CCLA has not provided any evidence to support its speculative opinions and conjecture.

308. In the context of global pandemic a reasonable limit on public gatherings, protest, or assembly has been implemented under the Public Health Order reinforced by the Injunction Order. The CCLA has not established on evidence that the Province's mitigation strategy of COVID-19 spread is overbroad, vague, or not in accordance with the principles of fundamental justice.

Application in Chambers vs. Application in Court

309. Rules 5.01, 75.02 , and 2.02 (1) set out the following:

Scope of Rule 5

- 5.01**
- (1) As provided in these Rules, an application is an original proceeding and a motion is an interlocutory step in a proceeding.
 - (2) This Rule provides for an *ex parte* application, an application in chambers, and an application in court.
 - (3) The application in chambers is heard in a short time, and it is scheduled at a time when chambers is regularly held or at an appointed time.
 - (4) The application in court is for longer hearings, and it is available, in appropriate circumstances, as a flexible and speedy alternative to an action.
 - (5) A person may make an application or respond to an application, in accordance with this Rule, except an application in a family proceeding is made and responded to as provided in Part 13 - Family Proceedings.

Motion for injunction

- 75.02** **(1)** A party who claims an injunction as a final remedy may make a motion for the injunction in either of the following circumstances:
- (a)** the party is entitled to judgment under Rule 8 - Default Judgment, or Rule 13 - Summary Judgment;
 - (b)** a judge determines, after the trial of the action or hearing of the application in which the claim is made, that an injunction should be issued.
- (2)** A party who obtains a judgment and finds that an injunction is required to give effect to the judgment may make a motion for the injunction.

Irregularity or mistake

- 2.02** **(1)** A failure to comply with these Rules is an irregularity and does not invalidate a proceeding or a step, document, or order in a proceeding.

310. As counsel for the Attorney General, I decided to bring the application for the injunction in chambers, pursuant to Rule 5.01. The Province's *ex parte* application was heard in less than one-hour and was an original proceeding wherein the Province requested a permanent *quia timet* injunction. The CCLA raises procedural issues that are immaterial. The Supreme Court found that the Province established the evidentiary foundation for the injunction and granted the injunction in accordance with the law.

Conclusion

311. The task of wrestling this disease into submission is no easy feat and is one that requires a dynamic and multipronged approach. The Injunction Order was part of that approach and the Injunction Order played a pivotal role to curb the spread of COVID-19.

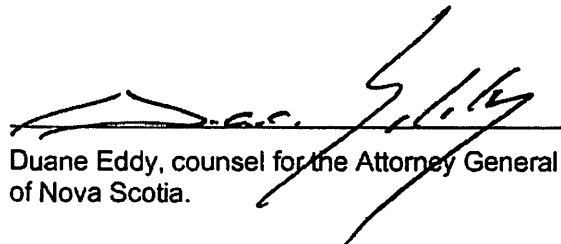
312. If the court finds that there is an infringement of s. 2 (b) the Injunction Order it is saved by s. 1, considering the pressing and substantial objective of stopping the spread of COVID-19, the "harm principles" similar to "hate speech" incorporated into the *Charter*, and how being able to express anti-lockdown rhetoric, organize, request, incite, promote, invite, or attend illegal public gatherings, causing actual and threatened harm (spread of a deadly disease) to vulnerable

groups and Nova Scotians, is contrary to the values s. 2(b) is meant to be protect. Moreover, any infringement on liberty or right to assemble is also saved under s. 1. The COVID-19 restrictions that may affect liberty under s. 7 and s. 2 (c) "right to assembly" is evidenced by Dr. Strang to save lives by reducing COVID-19 transmission and spread, which is a pressing and substantial objective and proportional. The Province used the least intrusive measures (i.e. some limited gathering permitted) and all Nova Scotians were, at the time the injunction was in effect, subject to the same Public Health Order and Injunction Order *mutatis mutandis*. The gathering restrictions do not discriminate on the basis of any enumerated ground or analogous ground under the *Charter*.

313. In summary, the Supreme Court had jurisdiction to grant the *quia timet* injunction on evidence. The Supreme Court did not issue an illegal injunction.

PART IV. RELIEF SOUGHT

314. The Attorney General requests that the motion be dismissed with costs.
315. All of which is respectfully submitted.


Duane Eddy, counsel for the Attorney General
of Nova Scotia.

Halifax, Nova Scotia
June 25, 2021

This is Exhibit "M" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be a name, possibly "A. J. ...".

Court Administration

JUN 25 2021

Halifax, N.S.

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

and

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

Respondent

and

The Canadian Civil Liberties Association

Respondent

Brief of the Canadian Civil Liberties Association

(Responding to the Attorney General of Nova Scotia's informal motion to dismiss on account of mootness)

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Counsel for the Attorney General of Nova Scotia

OVERVIEW

1. The Supreme Court of Nova Scotia rendered a decision and Order that affects the constitutionally-protected rights of all Nova Scotians. It did so at an *ex parte* hearing that lasted 13 minutes. The parties and the public were not present. They had no opportunity to test the evidence that purportedly justified such a far-reaching Order, or to challenge the legal basis of the Province's request.
2. Given the secret nature of the hearing, the Attorney General of Nova Scotia had an obligation to present all relevant evidence and jurisprudence to the Chambers judge, including contrary views. He failed to fulfill this obligation. Accordingly, the Chambers judge was deprived of relevant evidence showing that injunctive relief was not needed for enforcement of the existing Public Health Order, and that some of the activities being enjoined carried no or minimal risk of COVID-19 transmission. The application judge was also deprived of case law establishing that the injunctive relief requested was neither legally available nor substantively justified.
3. When the Injunction Order resulting from this secret hearing became public, the Canadian Civil Liberties Association ("CCLA") took immediate steps to pursue an urgent re-hearing to protect the constitutional rights and civil liberties of Nova Scotians. The Attorney General opposed an urgent re-hearing. Then, one week before this matter was to be heard in open court, the Attorney General moved to discharge the Injunction Order, on the bare assertion that it was "no longer necessary". The Court granted the discharge of the Order on June 22, 2021. The Attorney General now says that the re-hearing should not occur because the case is moot.
4. The case is not moot. There is live controversy between the parties about the legality and constitutionality of this Court's *ex parte* decision. The COVID-19 pandemic is ongoing and at any time the Attorney General could return to this Court on an *ex parte* basis to again seek an order that would infringe upon the constitutionally protected rights of Nova Scotians.
5. Even if the case is moot, the interests of justice require that a re-hearing in open court proceeds. There is an adversarial context that has produced a more exhaustive record and complete legal submissions. The ongoing public health emergency and the far-reaching nature of this Court's

ex parte decision warrant the use of judicial resources, particularly given the evidence and case law that was not presented to the application judge, the illegality of the injunctive relief granted, and the inadequate review that was given to the *Charter* issues. Re-hearing an *ex parte* application is squarely within the proper role of the Court and would not interfere in any way with policy making.

PART I—STATEMENT OF FACTS

The Province’s *ex parte* application for injunctive relief

6. On May 11, 2021, the Attorney General of Nova Scotia was granted permission to file an *ex parte* application, on an expedited basis, seeking *quia timet* injunctive relief in anticipation of a planned rally against COVID-19 public health restrictions.¹
7. The only justification pleaded for the *ex parte* nature of the hearing was the assertion that “injunctive relief is necessary to prevent or reduce the spread of SARS-CoV-2 which causes Covid-19 within the Province of Nova Scotia”.²
8. The Attorney General filed his materials on May 13, 2021, which included a brief and affidavits affirmed by Dr. Robert Strang, Chief Medical Officer of Health, and Hayley Crichton, Director of Public Safety and Investigations for the Department of Justice.³
9. Missing from the Attorney General’s materials was evidence addressing the following relevant questions:
 - 1) Whether any available enforcement activities had already been attempted against the named respondents for known past breaches of the Public Health Order, and if not, why not;
 - 2) Whether all activities that the Attorney General sought to enjoin carried the same public health risk;

¹ *Nova Scotia (Attorney General) v Freedom Nova Scotia*, 2021 NSSC 170, at para 1 (“*Freedom Nova Scotia*”); BOA, Tab 13.

² Notice of *Ex Parte* Application, May 12, 2021, page 1, see for contrast, the available justifications for an *ex parte* motion under Rule 22.03(2).

³ *Freedom Nova Scotia*, at para 5; BOA, Tab 13.

- 3) Whether the Injunction Order was necessary to issue against all Jane Doe and John Doe respondents in the province; and
- 4) The Chief Medical Officer of Health's intention to use his powers to restrict "activities that incite illegal gatherings" including through the regulation of online speech.⁴

Also missing from the Attorney General's materials was any reference to authoritative jurisprudence which indicated that the relief sought may not be legally authorized, including recent Covid-19 injunction case law such as *Beaudoin v. British Columbia*, 2021 BCSC 248, or the leading case on *quia timet* injunctions, *R. v Canadian Broadcasting Corp.*, 2018 SCC 5, or other contra cases as set out in the CCLA's brief on the merits.

The 13-minute *ex parte* hearing, resulting Injunction Order, and decision

10. The application was heard the day after the Attorney General filed his materials, at a closed hearing that lasted 13 minutes. The affiants did not appear. The Court did not ask any questions about the Attorney General's evidence, including questions about whether past enforcement activities had failed, or whether the injunctive relief was warranted to enjoin online speech or political protest and peaceful assembly that was physically-distanced and masked.
11. The application judge did ask if this *ex parte* process had ever been used to obtain the type of injunctive relief requested in Nova Scotia. Counsel for the Attorney General advised that it had not, to his knowledge. He offered no authority for his novel procedural approach.
12. There was an approximately two-minute discussion between the application judge and counsel for the Attorney General about the impact of the injunctive relief on the rights of Nova Scotians. No specific *Charter* rights were identified or discussed. The Attorney General was not asked to justify the apparent rights intrusions contained in the Injunction Order.

⁴ Supplemental Affidavit of Dr. Strang, sworn June 15, 2021, para 45

13. After a brief recess, court resumed, and the application judge advised the Attorney General that he would sign the draft Order (the “Injunction Order”) provided by counsel. The Injunction Order applied not just to persons associated with the planned rally, but also against John Does and Jane Does, that is to say, all Nova Scotians. There was no discussion about apparent differences between the scope of the Injunction Order and the evidence presented at the hearing, or the remarkable inclusion of everyone in the province as respondents.
14. Later that day, the application judge issued reasons for his decision. Those reasons contain four paragraphs on “*Quia Timet* Injunctions and Charter Considerations.” These paragraphs were copied verbatim from the Attorney General’s brief. The reasons also contain seven paragraphs on “Balance of Convenience and Public Authorities” which are almost identical to the Attorney General’s brief.⁵
15. The Injunction Order and the application judge’s decision were then made publicly available and posted online.

CCLA’s steps to obtain public interest standing and an urgent re-hearing

16. The CCLA acted immediately to attempt to address its concerns about the illegality of the Injunction Order, both by direct request to the Attorney General and by seeking redress in the Court as contemplated by the order itself.
17. On May 17, 2021, the CCLA wrote to the Attorney General and identified its concerns with the constitutionality of the Injunction Order, requesting that the Attorney General narrow its scope. The CCLA also indicated its intention to seek a rehearing of the *ex parte* Application, if no timely steps were taken.⁶
18. The CCLA had received no response from the Attorney General as of May 26, 2021, when it initiated a request for rehearing to the Court. With the assistance of the Prothonotary, the CCLA received direction from the Chambers judge that it must first bring a motion for standing in the Attorney General’s Application, prior to requesting a rehearing.⁷

⁵ *Cojocaru v. British Columbia Women’s Hospital and Health Centre*, 2013 SCC 30, at para 50; BOA, Tab 4.

⁶ Affidavit of Jody Lussier, sworn June 25, 2021, para 6 and Exhibit D.

⁷ Affidavit of Jody Lussier, sworn June 25, 2021, para 5 and Exhibit C.

19. The CCLA filed its motion materials for public interest standing promptly, on May 27, 2021, and set down a Chambers motion at the earliest possible date on June 4, 2021. Counsel for the Attorney General, prior to obtaining instructions on the motion, immediately sought to have it delayed until after June 14, 2021.⁸ Ultimately, the Attorney General consented to the CCLA's motion for standing on June 1, 2021.⁹
20. On May 27, 2021, the Attorney General responded to the CCLA's letter of May 17, 2021, and indicated that the matter would be dealt with through counsel.¹⁰ The Attorney General did not subsequently agree to amend the terms of the Order in any fashion or to address the CCLA's concerns about its scope, and the litigation has proceeded.
21. The CCLA sought an expedited date for the rehearing, on June 14, 2021. The Attorney General opposed the request for an expedited date, on the basis that the matter was complex and that there was no urgency in the rehearing.¹¹ In Chambers on June 4, 2021, Justice Gabriel ordered that the rehearing would proceed on the date requested by the Attorney General, on June 30, 2021. A schedule for the exchange of materials on the rehearing was also established.¹²

The Attorney General's informal motion for mootness and threat to pursue costs

22. On June 14, 2021, the Attorney General filed a motion to have the Injunction Order set aside, scheduled for Chambers on June 22, 2021. The only evidence on the motion was a Solicitor's Affidavit which indicated on hearsay evidence that the injunction was "no longer necessary". No brief was filed by the Attorney General, and notice of the motion was not made public until June 18, 2021, after an objection about lack of notice was raised by the CCLA to the Court.¹³
23. The CCLA took the position that the Attorney General's motion should have been heard on June 30, 2021, at the time of the rehearing, and that in the alternative the motion should be

⁸ Affidavit of Jody Lussier, sworn June 25, 2021, para 6 and Exhibit D.

⁹ Affidavit of Jody Lussier, sworn June 25, 2021, para 7 and Exhibit E.

¹⁰ Affidavit of Jody Lussier, sworn June 25, 2021, para 3 and Exhibit A.

¹¹ Affidavit of Jody Lussier, sworn May 27, 2021, para 6 and Exhibit D.

¹² Order of Justice Gabriel, June 4, 2021.

¹³ Affidavit of Jody Lussier, sworn May 27, 2021, para 5-7 and Exhibit A.

granted only on a without prejudice basis to the CCLA's right to a rehearing on June 30, 2021, as ordered by Justice Gabriel.

24. The motion to set aside the Injunction Order was granted by Justice Gatchalian in Chambers on June 22, 2021. At the hearing of the motion, without notice, counsel for the Attorney General sought an order from Justice Gatchalian vacating the June 30, 2021, rehearing date. This relief was denied by Justice Gatchalian, on the basis that another judge of the Court was already seized of the rehearing.
25. The Attorney General wrote to the Court on the same day, requesting that the June 30, 2021, date be vacated due to mootness, without filing a motion. The CCLA opposed this request, and submitted that the question of mootness should be resolved at the rehearing as scheduled.
26. The Attorney General subsequently notified the CCLA that it would be seeking an adverse costs award against the CCLA (a public interest litigant), in the event that the CCLA's arguments on the rehearing were not successful.¹⁴
27. At the direction of the Court, the CCLA is responding to the Attorney General's argument that the matter is moot and the rehearing date should be vacated. The CCLA maintains that it is appropriate for the Court to rehear the Attorney General's *ex parte* application.

PART II—ISSUES

28. The Attorney General's claim of mootness raises two issues:
 - 1) Whether there is a live controversy that affects or may affect the rights of the parties?
 - 2) If not, whether the Court should nevertheless exercise its discretion to hear the case?

¹⁴ Affidavit of Jody Lussier, sworn June 25, 2021, para 8 and Exhibit F.

PART III—LAW & ARGUMENT

ISSUE I – There is a live controversy that affects or may affect the rights of the parties

29. The doctrine of mootness “applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties.”¹⁵ In this case, there is a “live controversy” between the parties, and the Court’s decision on re-hearing will or may affect their rights. The case is therefore not moot.
30. In *Borowski v Canada (Attorney General)*, the Supreme Court of Canada canvassed the types of circumstances that render a dispute moot. These included the repeal of a bylaw being challenged, an undertaking to pay damages regardless of the outcome of an appeal, the non-applicability of statute to the party challenging the legislation, the death of a party appealing a criminal matter, or the end of the strike for which a prohibitory injunction was obtained. In *Borowski* itself, the matter was found moot because the sections of the challenged legislation had been repealed.¹⁶
31. The common thread linking all of these examples is that a change of circumstances has made the concrete dispute disappear, rendering the issues academic.
32. While the Injunction Order has been discharged, the application judge’s *ex parte* decision remains. The Province takes the position that the decision should remain the law in Nova Scotia. CCLA takes the position that the Court must rehear the issues raised, so that a new decision can be rendered on full evidence and argument, replacing the original decision. This is a live controversy.
33. The *ex parte* decision confers new powers on the Attorney General that have not previously been recognized by any provincial superior court in Canada, specifically the power to obtain injunctive relief against all citizens in a province in the absence of any statutory authority or common law cause of action, even where this relief interferes with *Charter* rights. This new

¹⁵ *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, at para 15 (“*Borowski*”); BOA, Tab 2.

¹⁶ *Borowski*, at paras 17-23; BOA, Tab 2.

power was both requested and conferred without any apparent acknowledgment that it was new.

34. In the context of an ongoing public health emergency—one that has seen multiple waves of outbreaks and related public health restrictions—there is a real possibility that the Attorney General will use this new power to again obtain *ex parte* injunctive relief that infringes the *Charter* rights of Nova Scotians.
35. Accordingly, what this Court decides on re-hearing will affect or may affect the rights of the parties. If the Court refuses re-hearing or affirms the application judge, the Attorney General will have a new power not previously established at law that can be used to the detriment of the fundamental and legal rights of Nova Scotians. On this basis, the case is not moot.

ISSUE 2 – It is in the interests of justice to hear this case

36. Even if the Court finds no “live controversy” between the parties, it can still permit re-hearing of the *ex parte* application. The Court has discretion to hear an otherwise moot case where it is in the “interests of justice” to do so.¹⁷ This is a flexible test that is met in the unique circumstances of this case.
37. Three considerations guide this discretion:
 - 1) the absence or presence of an adversarial context;
 - 2) whether the circumstances of the dispute warrant the use of scarce judicial resources; and
 - 3) whether the court would be exceeding its proper role by making law in the abstract.¹⁸

¹⁷ *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, at para 17; BOA, Tab 6.

¹⁸ *CSJLM v Nova Scotia (Community Services)*, 2019 NSCA 59, at para 10; BOA, Tab 5; *Nova Scotia (Community Services) v Nova Scotia (Attorney General)*, 2017 NSCA 73, at paras 61-63; BOA, Tab 14.

Presence of an adversarial context

38. The requirement of an adversarial context “may be largely or wholly satisfied if the matter has been fully and zealously argued”.¹⁹ In the present case, both the Attorney General and the CCLA are represented by legal counsel. Both have submitted legal briefs, case law, and affidavit evidence to the Court. There is ongoing disagreement between the parties regarding the legality of the decision granting the *ex parte* Injunction Order, which, regardless of the discharging of the injunction, remains good law with the ability to impact Nova Scotians.

Appropriate use of judicial resources

Common law and statutory right to re-hearing

39. A re-hearing of the *ex parte* application for an injunction, in which the Court will receive evidence and hear argument from both parties, is an appropriate use of judicial resources. Civil Procedure Rule 22.06(2) provides for the ability of a party “who is affected by an *ex parte* order” to “require the motion to be heard again”. In *Smith v Lord*, the Court of Appeal held that the Supreme Court has inherent jurisdiction to re-hear an *ex parte* proceeding to prevent abuse, but should exercise this jurisdiction within a framework of principles relevant to the matters in issue.²⁰ Part of that framework is the *audi alteram partem* principle—a fundamental tenet of our legal system—which “requires that courts provide an opportunity to be heard to those who will be affected by the decisions.”²¹
40. In *Kapoor v Makkar*, the British Columbia Court of Appeal relied on the *audi alteram partem* principle and the inherent dangers of *ex parte* proceedings to justify rehearing:

In *Gulf Islands Navigation Limited v. Seafarers' International Union of North America (Canadian District)* (1959), 18 D.L.R. (2d) 625 at 631, 28 W.W.R. 517 at 522-523 (B.C.C.A.), Mr. Justice S. Smith explored the nature of a hearing to set aside an *ex parte* injunction and explained that the parameters of the hearing subsequent to the *ex parte* order are influenced by the general rule of adjudication, *audi alteram partem*:

¹⁹ *Mercredi v. Saskatoon Provincial Correctional Centre*, 2019 SKCA 86, at para 20; BOA, Tab 11. See also *Borowski*, at para 43; BOA, Tab 2.

²⁰ *Smith v Lord*, 2013 NSCA 34 at paras 22-38; BOA, Tab 18.

²¹ *L.L.A. v. A.B.*, [1995] 4 S.C.R. 536, at para 27, as cited in *Waterman v. Waterman*, 2014 NSCA 110, at para 72; BOA, Tab 10.

Ex parte orders are *sui generis*; the general rule of adjudication is *audi alteram partem*, and that rule is only relaxed in *ex parte* proceedings because of their inconclusiveness. In such proceedings a Judge usually relies on counsel to a large extent, both as to the facts and the law; and to hold that when the inconclusive order is looked at again more carefully, the party at first absent is restricted so that he cannot raise all the points that he could have raised if heard in the first instance, is clearly an injustice. It would mean that if the original Judge is not available for a rehearing, the party not at first heard is seriously prejudiced. In the absence of intractable authority the other way, we should hold that he is entitled to be heard, not to be half heard, which is all that he would be if any part of the subject of the *ex parte* order were closed to him when he at last got before a Judge.

A "without notice" order is an extraordinary, powerful, interlocutory remedy which is recognized as having the potential to inflame a dispute between parties in fraught situations or to produce potential injustice when made on incomplete submissions that generate a wrong understanding of the circumstances. To protect against avoidable damage to the litigants or the litigation process, while retaining this valuable judicial response for emergency situations, procedural safeguards (which I do not see in this case) are usually employed. These may include a true interim term establishing the duration of the order, or a term providing a return date by which an opportunity is given to the other party to be heard without their filing a fresh application, and a term requiring service, by a time certain, of all materials that were before the judge on the application, along with a copy of the entered order. On occasion even short notice, or even informal notice, will serve to alleviate some of the offence that may be taken from the presentation to a party of an order obtained against them without notice. There is, of course, a time and place for without notice orders, but I respectfully suggest that to the extent possible when a without notice order must be made, these time honoured safeguards should be employed vigorously.²²

Special considerations where constitutionality challenged

41. Re-hearing the Attorney General's application is a particularly apt use of judicial resources where CCLA has challenged the legality and constitutional validity of the Order.
42. Even where no adversarial issue remains between parties, courts have nevertheless determined it an appropriate use of judicial resources to hear a factually moot constitutional challenge. This is especially so where the challenge is to a newly conferred power by which "affected persons can be temporarily denied their fundamental rights".²³

²² *Kapoor v Makkar*, 2020 BCCA 223 at paras 10-11; BOA, Tab 9.

²³ *A.L.G.C. v. Prince Edward Island*, [1998] P.E.I.J. No. 15, at paras 8-11 ("*A.L.G.C.*"); BOA, Tab 1.

43. In the present case, the Court's decision has conferred new, unprecedented powers on the Attorney General – to obtain *ex parte* injunctive relief against all Nova Scotians in the absence of any statutory authority or common law cause of action, even where this relief interferes with Nova Scotians' *Charter* rights. In the context of an ongoing and evolving public health emergency, it is not speculative to anticipate that the Attorney General will use this new power again.
44. In *A.L.G.C. v. Prince Edward Island*, a constitutional challenge was filed regarding “new and novel legislation” that conferred power on a justice of the peace to issue *ex parte* emergency protection orders that would temporarily deny respondents their fundamental rights.²⁴
45. Jenkins J. found that no adversarial issue remained between the parties, as the order concerning the applicant was revoked the day after the application was commenced. He nevertheless exercised his discretion to hear the application.²⁵

Special considerations apply to the exercise of this discretion where the case is a constitutional challenge. In constitutional cases, the general rule against deciding moot cases usually, but not always, gives way to the exercise of discretion in favour of deciding the case.

46. Jenkins J. wrote that, with regard to constitutional cases, the Supreme Court of Canada's decision not to decide the moot appeal in *Borowski* “appears as the exception”, and the Court's decision in *Tremblay v. Daigle*,²⁶ “represents the prevalent practice.”²⁷
47. *Tremblay v. Daigle* was an appeal of an interlocutory injunction that prevented the appellant from obtaining an abortion. Among the appellant's grounds of appeal was that the substantive rights the lower courts had held supported the injunction did not exist. During the hearing before the Supreme Court of Canada, the Court learned that the appellant had already obtained an abortion. Though the appeal was factually moot, the Court exercised its discretion to continue the hearing, “in order to resolve the important legal issue raised”.²⁸

²⁴ *A.L.G.C.* at para 10; BOA, Tab 1; See also *Head v. Leader*, 2001 MBQB 228; BOA, Tab 8.

²⁵ *A.L.G.C.*, at para 8; BOA, Tab 1.

²⁶ *Tremblay v. Daigle*, [1989] S.C.J. No. 79 (“*Tremblay*”); BOA, Tab 19.

²⁷ *A.L.G.C.*, at para 8; BOA, Tab 1.

²⁸ *Tremblay*, at para 77; BOA, Tab 19.

Quickly changing circumstances

48. It is also an appropriate use of judicial resources for Courts to hear factually moot matters where, as here, quickly changing circumstances can render the matter moot so that it may never be able to be heard as a live controversy. It is not speculative to anticipate that the Attorney General could again apply for an *ex parte* injunction, and move to discharge it once an affected party seeks a rehearing.
49. In *Mission Institution v. Khela*, an appeal regarding a *habeas corpus* application, the matter was rendered factually moot after the appellant was transferred to another facility. The Supreme Court of Canada held that, despite being moot, the appeal merited a decision as the nature of *habeas corpus* applications are such that “the factual circumstances of a given application can change quickly, before an appellate court can review the application judge’s decision.”²⁹ The Court wrote, “such cases will often be moot before making it to the appellate level, and are therefore ‘capable of repetition, yet evasive of review’.”³⁰
50. In this case, it took a public interest litigant nearly seven weeks to obtain a date for rehearing, after the Attorney General obtained its relief *ex parte*. The Attorney General’s successful motion to discharge the *ex parte* Injunction Order in the present case, one week before the matter was scheduled for a contested hearing, should not prevent this Court from proceeding.

Issues of procedural fairness

51. Finally, it is an appropriate use of judicial resources for Courts to hear factually moot matters where a party raises issues of procedural fairness. In the present case, the Attorney General failed to fulfill its obligation to present all relevant evidence and case law at the *ex parte* hearing. The hearing resulting in the Injunction Order was therefore procedurally unfair.
52. The Attorney General is not an ordinary party. Crown attorneys, as agents of the Attorney General, have broader responsibilities to the court.³¹

²⁹ *Mission Institution v. Khela*, 2014 SCC 24, at para 14 (“*Khela*”); BOA, Tab 12.

³⁰ *Ibid.* See also *Wilcox v. Alberta*, 2020 ABCA 104, at para 27; BOA, Tab 22, and *Pratt v Nova Scotia (Attorney General)*, 2020 NSCA 39 (“*Pratt*”), at para 8; BOA, Tab 16.

³¹ *Ontario v Criminal Lawyers’ Association of Ontario*, 2013 SCC 43 at para 37; BOA, Tab 15.

53. On an *ex parte* proceeding, the Crown is required to provide full, fair, and frank disclosure to preserve the integrity of the court's process:

... the law imposes an exceptional duty on the party who seeks *ex parte* relief. That party is not entitled to present only its side of the case in the best possible light, as it would if the other side were present. Rather, it is incumbent on the moving party to make a balanced presentation of the facts in law. The moving party must state its own case fairly and must inform the Court of any points of fact or law known to it which favour the other side. The duty of full and frank disclosure is required to mitigate the obvious risk of injustice inherent in any situation where a Judge is asked to grant an order without hearing from the other side.³²

54. *Pratt v Nova Scotia (Attorney General)*, 2020 NSCA 39, was an appeal of a decision of the Nova Scotia Supreme Court. Rosinski J. at the NSSC determined that the appellant's *habeas corpus* application was factually moot, and summarily dismissed it. The Court of Appeal exercised its discretion to hear the matter, despite that fact that it was factually moot, as the appellant had by that time been released from solitary confinement. The appeal raised issues of procedural fairness, including that Rosinski J. relied on information not disclosed to the appellant by the Attorney General, and did not provide him with the opportunity to make submissions.³³ Further, as in the instant case, Rosinski J.'s decision established new legal principles without providing any legal authority.³⁴ The Court of Appeal held that the issues raised were important, and "subject to repetition yet evasive of review".³⁵ It held that Rosinski J.'s summary dismissal of Mr. Pratt's application was not procedurally fair, and that a live controversy remained at the time warranting a hearing.³⁶

55. In this case, the Attorney General failed to provide full, fair, and frank disclosure of all relevant facts and contrary case law. This strongly favours rehearing.

³² *United States of America v Friedland*, [1996] O.J. No. 4399, at para 27; BOA, Tab 20. See also *PricewaterhouseCoopers LLP v. Phelps*, 2010 ONSC 1061, at para 44; BOA, Tab 17.

³³ *Pratt*, at paras 4-5; BOA, Tab 16.

³⁴ *Ibid*, at para 6; BOA, Tab 16.

³⁵ *Ibid*, at para 8; BOA, Tab 16.

³⁶ *Ibid*, at para 9 and 69; BOA, Tab 16.

Re-hearing is squarely within the proper role of the Court

56. This matter was initiated by the Attorney General commencing a legal proceeding and asking this Court to exercise its judicial authority. The Court obliged. If hearing the *ex parte* application was within the proper role of the Court, then a re-hearing of the application is also within the proper role of the Court.
57. As stated above, Civil Procedure Rule 22.06(2) provides for the ability of a party “who is affected by an *ex parte* order” to “require the motion to be heard again”. A rehearing of the Attorney General’s application for an injunction is clearly within the proper role of this Court.
58. Contrary to the assertion of the Attorney General in its written submissions, CCLA has not argued that the prohibitions as set out in the Public Health Order are unconstitutional. Rather, the CCLA submits that the Court itself must not restrict *Charter*-protected activities with an Injunction Order that is enforceable by arrest and detention. There can be no intrusion into the role of the Legislature on a re-hearing of the Attorney General’s application.
59. The Attorney General cites only *Coaker v. Nova Scotia (Attorney General)* in support of its position that the present matter is moot and should not be heard. In that case, the applicants had filed applications for *habeas corpus* in relation to a “lockdown” of general inmate population cells that began on or about September 2, 2018 and ended on September 24, 2018, before the date of the hearing. In his reasons for decision, Rosinski J. noted that Chipman J. had already adjudicated the lawfulness of the lockdown between September 1, 2018 and September 19, 2018 in *Pratt v. AGNS*, 2018 NSSC 243, and had determined that it was lawful and procedurally fair.³⁷
60. Rosinski J. wrote that he understood that the applicants were asking the Court to conclude their constitutional rights had been breached, and to “pass judgment on section 79 of the Correctional Services Regulations by providing ‘helpful guidance’ to correctional facility staff which would ensure that such lockdown decisions in future are made in a more

³⁷ *Coaker v. Nova Scotia (Attorney General)*, 2018 NSSC 291 (“*Coaker*”), at paras 23-24; BOA, Tab 3.

procedurally and substantively fair manner”.³⁸ He opined that, “in the circumstances of this case, these requests are not properly ‘the business of the court’.”³⁹


61. *Coaker* is distinguishable. This is the first time that the Court will receive contested submissions on the legality of the Injunction Order, and the Court is not being asked to pass judgment on or determine the constitutionality of the Public Health Order or the *Health Protection Act*. Rather, the CCLA has filed a notice to require the Court to rehear the Attorney General’s application for an injunction and to consider the constitutional issues raised by the injunction applied for, as it is entitled to do in the public interest.

PART IV—ORDER SOUGHT

62. CCLA requests that the Court deny the Attorney General’s motion on the basis that the rehearing is not moot, or alternatively, that it is in the interests of justice to rehear this case.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated June 25, 2021, in Halifax, Nova Scotia.



Nasha Nijhawan



BY Benjamin Perryman

Counsel for the CCLA

³⁸ *Coaker*, at para 35; BOA, Tab 3.

³⁹ *Coaker*, at para 39; BOA, Tab 3.

This is Exhibit "N" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to be a name, possibly "D. Zwibel".

WIKIPEDIA

Quia timet

Quia timet (pronounced [^kʷɪ.a ˈtɪmɛt]; Latin for "because he fears") is an injunction to restrain wrongful acts which are threatened or imminent but have not yet commenced. *Fletcher v. Bealey* (1884) [28 Ch.D. 688 at p. 698] stated the necessary conditions for equity courts to properly grant an injunction in such cases:

1. proof of imminent danger;
2. proof that the threatened injury will be practically irreparable; and
3. proof that whenever the injurious circumstances ensue, it will be impossible to protect plaintiff's interests, if relief is denied.

Brevia anticipantia

Quia timet remedies were writs at common law. According to Lord Coke, "there be six writs of law that may be maintained quia timet, before any molestation, distress, or impleading; as. 1. A man may have his writ or mesne, before he be distrained. 2. A warrantia chartae, before he be imploded. 3. A monstraverunt, before any distress or vexation. 4. An audita querela, before any execution sued. 5. A curia claudenda before any default of inclosure. 6. A ne injustice vexes, before any distress or molestation. And those are called brevia anticipantia, writs of prevention."^[1]

Quia timet injunctions in English law

Quia timet injunctions refer to a type of injunction in English law obtained where a wrong is anticipated. *Quia timet* literally means "because he fears".

According to the case *Graigola Merthyr Co Ltd v Swansea Corpn* to obtain a *quia timet* injunction there must be an immediate threat to do something.^[2] *Moffat's Trusts Law* states that a *quia timet* injunction can both prohibit something or mandate something to occur.^[3]

References

1. Coke on Littleton 100
2. Jonathan Garton, Graham Moffat, Gerry Bean, Rebecca Probert (2015) *Moffat's Trusts Law: Text and Materials*, Cambridge: Cambridge University Press, p. 724
3. Jonathan Garton, Graham Moffat, Gerry Bean, Rebecca Probert (2015) *Moffat's Trusts Law: Text and Materials*, Cambridge: Cambridge University Press, p. 724

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This is Exhibit "O" to the Affidavit of Cara
Zwibel affirmed before me on July 12, 2021

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and cursive, starting with a large initial letter and ending with a long, sweeping tail that extends to the right.

Nova Scotia Court of Appeal

Between:

The Canadian Civil Liberties Association

Appellant

and

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

Respondents

and

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

Respondents

Notice of Appeal (General)

To: Attorney General of Nova Scotia
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Jane Doe(s)
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Amy Brown
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Tasha Everett
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Dena Churchill
Address unknown

Appellant appeals

The appellant appeals from the whole of the judgment dated May 14, 2021, in the proceedings in the Supreme Court of Nova Scotia (Hfx. No. 506040) made by the Honourable Justice Scott Norton.

Order or decision appealed from

The decision was made on May 14, 2021, at Halifax, Nova Scotia.

Grounds of appeal

The grounds of appeal are:

- (1) The judge below erred in granting an injunction order without the Applicants having advanced any common law cause of action, statutory authority, or other right to a remedy;
- (2) The judge below erred in applying the test for an interlocutory injunction to the Applicants' request for a permanent injunction;
- (3) The judge below erred in stating and applying the wrong test for a *quia timet* injunction;
- (4) The judge below erred in granting an injunction order against all Nova Scotians without requiring evidence that such a remedy was needed against all Nova Scotians;
- (5) The judge below erred in granting an injunction order, without considering that the order infringed the *Charter* rights of all Nova Scotians and that this infringement may not be justified in the circumstances; and
- (6) The judge below erred in accepting the evidence of a named Applicant as independent expert evidence, and without compliance with Rule 55 or the common law requirements for independent expert evidence.

Authority for appeal

Judicature Act, RSNS 1989, c 240, s 38

Nova Scotia Civil Procedure Rules, Rules 90.02, 90.04, and 90.06

Order requested

The appellant says that the court should allow the appeal and that the judgment appealed from be reversed and set aside.

Motion for date and directions

The appeal will be heard on a time and date to be set by a judge of the Court of Appeal. The appellant must not more than eighty days after the date this notice is filed, make a motion to a judge of the Court of Appeal to set that time and date and give directions. You will be notified of the motion.

Contact information