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

Brief of the Canadian Civil Liberties Association

Motion for extension of time to file appeal

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OVERVIEW

1. The Canadian Civil Liberties Association ("CCLA") seeks an extension of time to appeal the decision in *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170 (the "Decision"), dated May 14, 2021.[1]

2. The Decision arises from an *ex parte* Application in Chambers made by the Province for an injunction against everyone in Nova Scotia (the "Injunction"). The ordered Injunction prohibited certain activities in respect of organizing, promoting or attending "Illegal Public Gatherings", which were already prohibited by an Order under the *Health Protection Act* (the "*Act*"). The *Act* already made any contraventions of the Order a provincial offence, enforceable by fine and/or imprisonment. The Injunction made the same activities punishable as contempt of court, and enforceable by immediate arrest and detention by the police, until an offender could be brought before a Justice of the Supreme Court.

3. The CCLA raised concerns about: (a) the legal authority for the Injunction; (b) the infringement of *Charter*-protected rights by the Injunction; and (c) a lack of candour in the presentation of evidence and argument by the Province at the *ex parte* hearing. On May 27, 2021, it sought a rehearing of the Province's Application, which was scheduled for June 30, 2021.

4. On June 22, 2021, the Province successfully moved to discharge the Injunction on the basis that it was "no longer necessary", and asked the Court to vacate the scheduled rehearing on the basis that it was moot. Chipman J. heard argument on the issue of mootness on the

[1] *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170, Book of Authorities of the Appellant ("Appellant's BOA"), TAB 8.

scheduled rehearing date of June 30, 2021. The Province's request to vacate the rehearing was granted. At that point, the time to appeal the decision of the Application Judge had elapsed.

5. The CCLA has at all times maintained a genuine, good faith intention to challenge the Decision. The short delay between the deadline to file a notice of appeal of the decision of the Application Judge and the filing of this motion for an extension of time was primarily due to its reasonable 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. This delay does not prejudice the Province, which has had notice of the CCLA's intention to appeal since July 8, 2021.

6. It is strongly in the interests of justice that the CCLA's proposed appeal of the Decision be heard on its merits. The Decision confers on the Province a new power to supplement the enforcement of provincial offences through arrest and detention for contempt proceedings that is without precedent in Canada. This new power was granted to the Province without hearing from any opposing party. The CCLA submits that the Province's argument in support of the Injunction, which was adopted in the Decision, disregarded binding Supreme Court of Canada jurisprudence, misapplied basic principles of injunctions, and ignored the *Charter*. Without consideration or correction by the Court of Appeal, the Decision will remain available as a precedent for future *ex parte* government action.

PART I – STATEMENT OF FACTS

A. The Injunction Order obtained by the Province

7. On May 12, 2021, the Province filed a Notice of Application in Chambers (*ex parte*) seeking a *quia timet* injunction, in anticipation of an imminent protest against COVID-19 public health restrictions.[2] It was anticipated that participants of that protest would not respect gathering limits or social distancing and masking requirements.[3] The Application sought to enjoin any person in Nova Scotia from organizing, promoting or attending "Illegal Public Gatherings", as defined (and prohibited) in the Public Health Order made under the *Act*.

8. The Province did not make any of the following assertions in its Application materials before the Court:

    a. that there was a common law cause of action against the Respondents;

    b. that the *Health Protection Act* expressly authorized injunctive relief as an enforcement tool; or

    c. that the statutory remedies available under the *Health Protection Act* had been tried against the Respondents and proven ineffective.[4]

9. On May 14, 2021, the application was heard *ex parte* by the Application Judge, Norton J. Later that day, the Court issued its Decision and granted an order ("Injunction Order") in the

[2] Affidavit of Cara Zwibel, affirmed July 12, 2021, para 6 and Exhibit "A".
[3] *Ibid.*, para 8 and Exhibit "C", paras 17-18.
[4] See *Health Protection Act*, SNS 2004, c 4, ss. 37 and 71, Appellant's BOA, TAB 5.

form requested by the Province, against the Respondents, including all Jane Does and John Does everywhere in Nova Scotia, for an indefinite period of time.[5]

10. The injunctive relief obtained was not limited to the anticipated rally that was the focus of the Province's materials, or to known or unknown associates of Freedom Nova Scotia or the named Respondents.

11. People who violated the Injunction Order, deliberately or accidentally, faced a risk of immediate arrest and detention until such time as they could be brought before a Justice of the Supreme Court.[6]

12. The Injunction Order did not have a time limit, expiring condition or comeback provision, and continued in effect indefinitely until varied or discharged by a further Order of the Court.[7]

13. The Injunction Order was also not returnable for a full hearing on the merits. Instead, the Injunction Order provided 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*...".[8]

B. Efforts by the CCLA to challenge the Injunction Order

14. 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

[5] Affidavit of Cara Zwibel, affirmed July 12, 2021, para 9. *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170, Appellant's BOA, TAB 8.
[6] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "D", paras 4-5.
[7] *Ibid.*, Exhibit "D", para 8.
[8] *Ibid.*, Exhibit "D", para 9.

consent to variation or rescission of the Injunction Order. The Attorney General did not respond substantively to the CCLA's request.[9]

15. 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 the CCLA to obtain public interest standing before requesting a rehearing.[10]

16. On June 4, 2021, the CCLA was granted public interest standing by order of Gabriel J. in Chambers. The Province opposed the CCLA's request for an expedited rehearing date of June 14, 2021, and Gabriel J. set the rehearing down for the Province's preferred date of June 30, 2021, with a timetable for the exchange of materials in advance of the rehearing.[11]

17. On June 14, 2021, the Province 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 single solicitor's affidavit, relying on hearsay evidence of the necessity of the Injunction Order. No brief was filed.[12]

18. 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. However, the CCLA did not disagree that discharge of the order was appropriate, given its

[9] *Ibid.*, para 11 and Exhibit "E".
[10] *Ibid.*, para 12 and Exhibit "F".
[11] *Ibid.*, para 13 and Exhibit "G".
[12] *Ibid.*, para 14 and Exhibit "H".

position on the merits of the Decision. Gatchalian J. granted discharge of the Injunction Order in Chambers on June 22, 2021.[13]

19. Later that day, the Province wrote to Chipman J. by letter, submitting that the matter was moot and requesting that the rehearing date and filing deadlines be vacated.[14]

20. The parties prepared and filed all materials for the rehearing, including supplemental affidavits and briefs. In the Province's brief for the rehearing, it conceded that the Injunction Order engaged the *Charter*.[15]

21. Chipman J. heard oral argument on the issue of mootness on June 30, 2021, after receiving written submissions from both parties. The parties were prepared to conduct cross-examinations and argue the merits of the Injunction Order in a hearing *de novo*, the same day.[16]

22. In its written and oral submissions on the issue of mootness, the CCLA submitted that the Province 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.[17]

23. The CCLA also raised in oral argument two newly discovered issues to support that the Court should exercise its discretion to hear the matter. First, it argued that, despite an assertion to the contrary in the Province's brief on the Application, there was no evidence before the

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[13] *Ibid.*, para 16 and Exhibit "J".
[14] *Ibid.*, para 17 and Exhibit "K".
[15] *Ibid.*, para 18 and Exhibit "L".
[16] *Ibid.*, para 19.
[17] *Ibid.*, para 20 and Exhibit "M". See also, as cited in the Appellant's written submissions on mootness, *Pratt v Nova Scotia (Attorney General)*, 2020 NSCA 39, paras 4, 9 and 69, Appellant's BOA, TAB 10.

Application Judge that the Injunction Order should be issued against a person named Amy Brown. Second, it argued that the test suggested by the Province for a "*quia timet* injunction", and adopted in the Decision, lacked any cited authority and appeared to have come from a Wikipedia article in respect of a British case from 1884.[18]

24. Chipman J. decided that the *de novo* hearing of the Application was moot and that he was not prepared to exercise his discretion to allow it to proceed. 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.[19]

C. The CCLA's proposed appeal, and the appeal deadline

25. The CCLA now seeks to appeal the decision of the Application Judge granting the Injunction Order, on the basis that it contains several reviewable errors, set out in the Notice of Appeal.[20]

26. The appeal deadline in respect of the Application Judge's decision was June 22, 2021. On this date, the Province'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.[21]

27. 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 the

[18] Affidavit of Cara Zwibel, affirmed July 12, 2021, para 21 and Exhibit "N".
[19] *Ibid.*, para 22. *Nova Scotia (Attorney General) v. Freedom Nova Scotia*, 2021 NSSC 217, Appellant's BOA, TAB 9.
[20] Affidavit of Cara Zwibel, affirmed July 12, 2021, para 23 and Exhibit "O".
[21] *Ibid.*, para 24.

Application Judge 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.[22]

28. Notice to the Province of the CCLA's intention to appeal was provided by emailed letter to counsel for the Attorney General in this matter, Duane Eddy, on July 8, 2021. The letter attached the proposed Notice of Appeal.[23]

PART II – ISSUES

29. The issues on this motion are as follows:

1) Whether it is in the interests of justice for the Judge in Chambers to order an extension of time for the CCLA to file a notice of appeal of the May 14, 2021 decision of the Application Judge; and

2) Whether it is appropriate to dispense with the requirement of notice of this motion and of the proposed appeal to the Respondent, "Freedom Nova Scotia", and whether service of this Notice of Motion and of the proposed Notice of Appeal on the Respondents Jane Doe(s) and John Doe(s), Amy Brown, Tasha Everett, and Dena Churchill may be effected by posting the Notice of Motion and motion materials, and the Notice of Appeal if permitted to be filed, on the website www.ccla.org.

[22] *Ibid.*, para 25.
[23] *Ibid.*, para 26 and Exhibit "P".

PART III – LAW & ARGUMENT

ISSUE 1: Extension of time to file a notice of appeal

30. Civil Procedure Rule 90.13(3) provides that an appeal from an order of a judge or court must be started no more than 25 days after the date of the order. Time is calculated in accordance with Rule 94.02.

31. Rule 90.37(12) gives a judge of this Court the authority to extend the time to file a notice of appeal:

> **90.37(12)** A judge of the Court of Appeal hearing a motion, in addition to any other powers, may order any of the following:
>
> ...
>
> **(h)** that any time prescribed by this Rule 90 be extended or abridged before or after the expiration thereof.

32. Granting an extension of time to appeal is "ultimately, a determination of whether it is in the interest of justice to grant the extension".[24]

33. In the recent decision of *Shupe v. Beaver Enviro Depot*, Farrar J.A. set out the relevant factors when considering a request to extend the time for the filing of an appeal:[25]

> In determining whether it is in the interest of justice, common factors to be considered are:
>
> - the length of the delay;
> - the reason for the delay;

[24] *Shupe v. Beaver Enviro Depot*, 2021 NSCA 46 ("*Shupe*"), para 15, Appellant's BOA, TAB 12, citing *Farrell v. Casavant*, 2010 NSCA 71, Appellant's BOA, TAB 4.
[25] *Shupe*, para 15, Appellant's BOA, TAB 12.

- the presence or absence of prejudice;
- the apparent strength or merit in the proposed appeal; and
- the good faith intention of the appellant who exercises his or her right of appeal within the prescribed time period.

34. This list of factors is not exhaustive, and the "relative weight to be given to any of these factors may vary from case to case."[26]

35. The CCLA submits that all of the above factors weigh in favour of granting an extension in the present case, and that it is strongly in the interests of justice for the proposed appeal to be heard on its merits. In addition, the CCLA submits that the Court should consider the fact that there is a public interest in the issues raised by the appeal, and that the Decision was made *ex parte* on the strength of the Province's representations to the Court and without the opportunity to test the evidence or hear opposing argument.

A) *Length of delay*

36. As in *Shupe*, the time between the expiration of the appeal deadline and CCLA filing the Notice of Motion for an extension of time is a "relatively short" fifteen clear days.[27] The Province was notified of the CCLA's intention to seek an extension of time on July 8, 2021, which was five clear days after the scheduled rehearing on June 30, 2021.

[26] *Ibid.*, para 16, Appellant's BOA, TAB 12.
[27] *Ibid.*, para 17, Appellant's BOA, TAB 12.

B) *Reason for delay*

37. Where the appellant has a "reasonable excuse for the delay", the Court will favour an extension of time.[28]

38. In the time between the issuing of the *ex parte* injunction on May 14, 2021 and the date of filing the Notice of Motion to extend the time to appeal, the CCLA made every effort to pursue a hearing *de novo*. This possibility was not foreclosed until Chipman J. issued his decision declining to hear the matter on June 30, 2021. The CCLA moved expeditiously after this date to prepare and file its materials for this motion, including its proposed Notice of Appeal.

39. At all times, the CCLA has maintained a good faith intention to challenge the Decision of the Application Judge. The reasons for the delay are reasonable.

C) *Absence of prejudice*

40. Notice to the Province of the CCLA's intention to appeal the decision of the Application Judge was provided by emailed letter to counsel for the Attorney General, Duane Eddy, on July 8, 2021. This letter attached the proposed Notice of Appeal.

41. This is not a case in which the respondent would be prejudiced in a personal capacity by a significant delay, or in which the respondent was led to believe that the decision in question would not be appealed due to the passing of many months. The party that applied for the *ex parte* injunction that the CCLA wishes to appeal is the Province of Nova Scotia, as represented by the Attorney General. The Province was a party to the scheduled rehearing of its

[28] *Ibid.*, para 17, Appellant's BOA, TAB 12.

application, which was not dismissed until June 30, 2021. The Attorney General was notified of the CCLA's intention to appeal the Application Judge's decision shortly thereafter.

42. There is no prejudice to the Respondents by this short delay.

D) *Apparent strength and merit of proposed appeal*

43. In order to satisfy the Court that a proposed appeal should be permitted to proceed despite a delay in filing, the appellant need only establish that it "raises at least an arguable issue".[29] This is a low threshold.

44. The CCLA's proposed grounds of appeal raise arguable issues that are crucial to the civil liberties of Nova Scotians, and to the availability of injunctive relief to aid in the enforcement of a provincial offence. Beyond being arguable and in the public interest, the CCLA submits that the proposed appeal has merit.

45. As outlined in its proposed Notice of Appeal, and further explained below, the CCLA raises the following six grounds of appeal:

    a) *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.*

46. There is no remedy without a right. As the Supreme Court of Canada has stated, "an injunction is not a cause of action, in the sense of containing its own force. It is, I repeat, a remedy."[30]

47. Establishing a cause of action or statutory or other legal authority for action is a precondition to obtaining injunctive relief on an interim, interlocutory, or final basis. The CCLA will argue

[29] *Ibid.*, para 17, Appellant's BOA, TAB 12.
[30] *R v Canadian Broadcasting Corp*, 2018 SCC 5, para 25, Appellant's BOA, TAB 11.

on appeal that the Application Judge erred by granting injunctive relief despite the Province's failure to advance any basis for its entitlement to a remedy.

b) The judge below erred in applying the test for an interlocutory injunction to the Applicants' request for a permanent injunction.

48. Despite the absence of an underlying or ongoing legal proceeding to establish a right, the Province sought interlocutory relief. The test advanced by the Province,[31] and considered by the Court on the Application,[32] was the *RJR-MacDonald* test for an interlocutory injunction.[33]

49. After seeking an *interlocutory* injunction before the Applications Judge, however, the Province argued in anticipation of the *de novo* hearing that it had obtained a "permanent *quia timet* injunction" on the Application.[34]

50. The CCLA will argue on appeal that the Application Judge erred by applying the interlocutory test for an injunction despite the fact that the Injunction was the final relief sought by the Province, and the Application was not returnable at any fixed date for a full hearing on the merits.

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[31] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "C", para 57.
[32] *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170, para 12, Appellant's BOA, TAB 8.
[33] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, paras 78-81.
[34] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "L", para 310.

c) The judge below erred in stating and applying the wrong test for a quia timet injunction.

51. Even if the Province had grounds for an interlocutory *quia timet* injunction, it asked the Application Judge to apply the wrong test,[35] which was adopted in the Decision[36] as part of extensive judicial copying from the Attorney General's *ex parte* brief.[37]

52. The test advanced by the Province was offered without any attribution, and does not appear in any other modern Canadian case, as stated. It does, however, bear a close resemblance to a Wikipedia article, entitled "*Quia Timet*", about the common law writ, which cites the English decision in *Fletcher v. Bealey* (1885), 28 Ch D 688, as authority.[38] The CCLA will argue that the Application Judge erred by adopting this test into law in Nova Scotia without proper consideration.[39]

53. The CCLA will argue that it was an error for the Application Judge to adopt an English test for a *quia timet* injunction that is no longer the law in that country and that is materially different from existing case law in Canada.

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[35] *Ibid.*, Exhibit "C", para 72.
[36] *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170, para 27, Appellant's BOA, TAB 8.
[37] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "C", paras 57-77. *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170, paras 12-32, Appellant's BOA, TAB 8.
[38] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "N".
[39] The test from *Fletcher* has never been the law in Nova Scotia, and is no longer good authority in England; see *London Borough of Islington v Elliott & Anor*, [2012] EWCA Civ 56, Appellant's BOA, TAB 7.

d) 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.

54. The Court's power to enjoin activity that is already prohibited by statute is sparingly exercised. As recently noted by the British Columbia Court of Appeal, "the court should not grant injunctive relief unless the statutory provision is shown to be inadequate in some respect".[40]

55. The Province did not argue before the Application Judge that the statutory remedies available under the *Health Protection Act* were insufficient in any way, nor did it adduce any evidence that its attempts to enforce the *Act* against any Respondent, including the named Respondents, had been unsuccessful.

56. The CCLA will argue on appeal that, even if an injunction was available, there was no evidence in the record capable of supporting its application to all unnamed individuals in the province.

e) 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.

57. The *Charter* applies to all exercises of public authority, including judicial exercises of discretion under the common law. An injunction issued by a provincial superior court is subject to constitutional scrutiny and must comply with the fundamental standards established by the *Charter*.[41]

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[40] *Cambie Surgeries Corp. v. British Columbia (Medical Services Commission)* (a.k.a. *Schooff*), 2010 BCCA 396, paras 33-34, Appellant's BOA, TAB 3; See also *Beaudoin v British Columbia*, 2021 BCSC 248, Appellant's BOA, TAB 2.

[41] *BCGEU v British Columbia (Attorney General)*, [1988] 2 SCR 214, para 56, Appellant's BOA, TAB 1.

58. The Province did not identify any potential *Charter* infringement in its submissions to the Application Judge,[42] and the Decision entirely disregards the *Charter* rights infringed by the Injunction Order.[43]

59. The Province has since conceded that the Injunction Order infringed the *Charter* right to freedom of assembly and liberty,[44] and the CCLA submits that freedom of expression is also clearly engaged. The CCLA will argue that the absence in the Decision of any consideration of *Charter* compliance (or why this infringement is justified and in accordance with the principles of fundamental justice) is a reviewable error.

f) 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.

60. The Application Judge qualified Dr. Robert Strang, Chief Medical Officer of Health, as an expert in the Application, accepted his Affidavit as an expert report, and admitted its contents as "expert opinion evidence". Dr. Strang, while undoubtedly qualified, was also a named Applicant in the Decision.

61. The CCLA will argue that the Application Judge erred by failing to consider the requirements of Civil Procedure Rule 55 for the admission of expert opinion evidence, or the crucial element of independence,[45] before giving Dr. Strang's evidence the weight of expert evidence.

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[42] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "C".
[43] *Nova Scotia v. Freedom Nova Scotia*, 2021 NSSC 170, Appellant's BOA, TAB 8.
[44] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "L", paras 269 and 280.
[45] *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, Appellant's BOA, TAB 13.

E) ***Good faith intentions of appellant***

62. The CCLA is a public interest litigant, and has at all times in its involvement in this matter sought to protect civil liberties and ensure the proper exercise of state power, in good faith.

63. At all times after it became aware of the *ex parte* injunction issued by the Application Judge on May 14, 2021, the CCLA has demonstrated a genuine, good faith intention to challenge the decision.

The interests of justice

64. The CCLA submits that all of the above factors weigh in favour of the relief sought in the present case, and that on balance, the interests of justice would be served by granting an extension of time so that the CCLA can advance its appeal of the Decision.

65. The COVID-19 pandemic is not over and there is a real possibility that a need for enforcement of public health requirements will arise again. Even if not in the context of this pandemic, the Decision affords the government new power to obtain *ex parte* relief in anticipation of a breach of any statutory requirement, without statutory authority, evidence of a need for such extraordinary relief, or regard to *Charter*-protected rights.

66. The Supreme Court of Nova Scotia has determined that a *de novo* hearing of the Application, including cross-examination and a reconsideration of the evidence, is moot, on the basis of the discharge of the Order. However, the CCLA submits that the Court of Appeal retains the jurisdiction to hear an appeal of the Decision in order to correct legal errors which may

otherwise persist in the jurisprudence.[46] In the circumstances, it is in the public interest for the Court to exercise its function to correct these legal errors.

67. The decision under review relies on incorrect legal principles and applies the wrong legal test. Without correction, the Decision will be available as a precedent for future public injunctions by the government against Nova Scotians, including on an *ex parte* basis.

68. An extension of time to permit the CCLA to file a Notice of Appeal is particularly appropriate where the decision of the Application Judge was made without hearing any opposing party, and where the Province failed to provide full and fair disclosure of the facts and law on the *ex parte* application. It is strongly in the interests of justice for the proposed appeal to be heard on its merits, so that the Court of Appeal may hear the contested argument on the law that was absent below.

ISSUE 2: Notice requirements

69. Civil Procedure Rule 31.10 permits a judge to order a substituted method of notification if required.

70. It is not possible for the CCLA to serve the named respondent "Freedom Nova Scotia" because it is not a legal person. The CCLA submits it is therefore appropriate to dispense with the requirement of notice of this motion and of the intended appeal to the Respondent, "Freedom Nova Scotia".

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[46] *Judicature Act*, RSNS 1989, c 240, s. 38, Appellant's BOA, TAB 6.

71. The Province has not personally served or identified a physical or electronic address for Tasha Everett or Dena Churchill. There is no evidence in the record capable of identifying Amy Brown. The Jane Doe and John Doe respondents include every person in Nova Scotia.

72. The Injunction Order permitted service of the Injunction Order via email and social media posting, and by posting on the website https://novascotia.ca/coronavirus/.[47]

73. The CCLA submits it is therefore appropriate for the Judge in Chambers to permit service of this notice of motion and of the intended appeal on the Respondents Jane Doe(s) and John Doe(s), Amy Brown, Tasha Everett, and Dena Churchill by posting the notice of motion and motion materials on the website www.ccla.org.

PART IV – ORDER SOUGHT

74. The CCLA requests the following remedies:

a) An Order granting the CCLA's motion to extend the time to file a Notice of Appeal of the May 14, 2021 decision of the Application Judge; and

b) An Order dispensing with the requirement of notice of this motion and of the proposed appeal to the Respondent, "Freedom Nova Scotia", and permitting service of this Notice of Motion and of the proposed Notice of Appeal on the Respondents Jane Doe(s) and John Doe(s), Amy Brown, Tasha Everett, and Dena Churchill by posting the Notice of Motion and motion materials, and the Notice of Appeal if permitted to be filed, on the website www.ccla.org.

[47] Affidavit of Cara Zwibel, affirmed July 12, 2021, Exhibit "D", para 6.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated July __, 2021, in Halifax, Nova Scotia.

Nasha Nijhawan

for Benjamin Perryman

Counsel for the CCLA