

# Nova Scotia court prevents anti-masking protest from happening

COVID-19 | Injunctions | Litigation | Litigation & Dispute Resolution | Remedies

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This past weekend, despite Ontario's stay-at-home order, there were two major public protests in Toronto. On late Saturday afternoon (May 15<sup>th</sup>) an estimated crowd of 2,500 to 5,000 people gathered at Nathan Phillips Square to voice their concerns about the current Palestinian-Israeli conflict. That same day, an "anti-lockdown" protest was held at Queen's Park, with a large crowd marching through the downtown core.

In Nova Scotia, the story was different because of *quia timet* injunction granted by the Honourable Justice Norton in *Nova Scotia (Attorney General) v. Freedom Nova Scotia*, 2021 NSSC 170.

A *quia timet* injunction is a remedy that is sought by a party to stop potential harm from occurring before it is actually suffered, but is expected to occur in the future. This is different than the usual injunction that parties seek to prevent harm into the future because of a defendant's recent conduct.

In this case, the Nova Scotia government learned that an anti-mask rally was being organized for downtown Halifax on Saturday, 15 May 2021 at 1:00 pm, with a second rally to be held elsewhere. However, Public Health Orders granted under the province's *Health Protection Act* placed restrictions on outside gatherings. An order issued by the Chief Medical Officer of Health contained a definition for an "illegal public gathering", which, among other things, prohibited the organizing of an in-person gathering, promoting an illegal public gathering and attending an illegal public gathering.

The government viewed the rally as being contrary to the Public Health Orders.

On the motion for an injunction, the government filed affidavit evidence that included incidents of previous large gatherings organized by the defendant that contravened the Public Health Orders and that showed the defendant's promotion of the May 15<sup>th</sup> rally. The defendant called the event: "Worldwide Rally for Freedom – Halifax" and the defendant's Facebook page showed 261 comments, with 88 people listed as "interested" and 66 people listed as "going" as of May 12<sup>th</sup>.

Additional evidence, which was accepted by the court as findings of fact, showed, among other things, that COVID-19 was a new disease that could cause death, that there was no underlying immunity, that there were presently no drug therapies to cure COVID-19 (or its various strains) and that if left unchecked the virus could spread exponentially.

In Nova Scotia, since 1 March 2020, there had been 4,152 confirmed cases of COVID-19 and 71 deaths. More specifically, from 1 April 2021 to the hearing date, there were 2410 confirmed cases and 5 deaths.

As well, the evidence showed a recent increase in hospitalizations and that virus had become more transmittable.

The court accepted that the use of masks could prevent an infected person from transmitting the virus to others and could help protect a healthy person from contracting the virus. Masking was a tool in controlling the spread of COVID-19.

Based on these facts, Nova Scotia's Chief Medical Officer of Health opined that if the defendant's scheduled rally took place, there was a substantial risk of COVID-19 transmission to others. This was contrary to Nova Scotia's goal of prevent the spread of COVID-19.

To obtain a *quia timet* injunction, a party must meet the three elements of well-established injunction test found in *RJR McDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC). The party seeking the injunction must show (i) there is a serious question to be tried between the parties; (ii) that he or she will suffer irreparable harm if the injunction is not granted; and (iii) that the balance of convenience favours the granting of the injunction.

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In addition, as stated in *526901 BC Ltd. v. Dairy Queen Canada*, 2018 BCSC 1092, the moving party must show that there is a high degree of probability that the alleged harm will in fact occur. The presence of harm must be imminent.

The court accepted that the government's evidence of the presence and spread of COVID-19 was irrefutable and that if the rally was allowed to be held there was a high probability of imminent harm. In the circumstances, the harm was irreparable because COVID-19 could cause death and immeasurable impacts on the public health care system, communities and economies.

These harms were simply greater than permitting the rally to be held and so the injunction was granted. Specifically, the Supreme Court of Nova Scotia ordered that people were restrained anywhere in the Province 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*.

This case is important because it shows that injunctive remedies can play a role in preventing the spread of COVID-19 and that in some Canadian provinces there is a willingness on government to use the court system to help prevent the spread of the virus. This is merely an observation. However, it raises the question whether this case will set a precedent for other provinces to use in the coming months should the threat of the pandemic remain, despite current vaccination efforts, to prevent anti-masking or anti-lockdown rallies that exceed the restrictions in public health orders that have been enacted across Canada to prevent the spread of COVID-19. A PDF version is available to download [here](#).

If you require any litigation assistance, our [Dispute Resolution Group](#) lawyers are available to assist you. Please contact [Stephen Thiele](#) at 416.865.6651.

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