

Form 23.03

2017

No. 463399

SUPREME COURT OF NOVA SCOTIA

Court Administration

AUG 30 2017

Halifax, N.S.

Between:

LORNE WAYNE GRABHER

Applicant

And

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
NOVA SCOTIA as represented by the Registrar of Motor Vehicles**

Respondent

NOTICE OF MOTION

To: HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA, as represented
by the Registrar of Motor Vehicles

C/O Nova Scotia Department of Justice
1690 Hollis Street, Halifax NS, B3J 2L6
Ph. 902-424-4223

And To: The Nova Scotia Attorney General

C/O Nova Scotia Department of Justice
1690 Hollis Street, Halifax NS, B3J 2L6
Ph. 902-424-4223

I ACCEPT SERVICE OF THE WITHIN
DOCUMENT ON BEHALF OF THE ATTORNEY
GENERAL OF NOVA SCOTIA AS OF THE
30th DAY OF August 2017
Alicia Campbell

SOLICITOR
DEPT. OF THE ATTORNEY GENERAL
P.O. BOX 7, HALIFAX, NOVA SCOTIA

Motion

1. The Applicant, Lorne Wayne Grabher, brings this Motion to amend his Notice of Application, filed May 11, 2017, to include a challenge to the constitutionality of sections 5(c)(iv) and 8 of the *Personalized Number Plates Regulation*, NS Reg 124/2005 (the "Challenged Provisions"). Mr. Grabher intends to contend that the Challenged Provisions infringe section 2(b) of the *Canadian Charter of Rights and Freedoms*,¹ are overbroad, and are void and of no effect in accordance with section 52(1) of the Constitution Act, 1982.²

Time and Place

2. The motion is to be heard by a judge on September 6, 2017, at 2 PM at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. The moving party has arranged for the Motion to be heard during a half day hearing on that day and confirmed that opposing counsel will take no position in regard to the Motion. The moving party says that the Motion will not require more time.

References

3. The moving party relies on the following legislation, Rules, or points of law:
 - a) Civil Procedure Rules 83.03 and 83.11
 - b) Caselaw.

Evidence

4. Mr. Grabher intends to amend his Notice of Application as per the attached **Schedule "A"**.

Possible Order against you

5. 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 August 29, 2017.


 Jay Cameron
 Counsel for the Applicant, Lorne Wayne Grabher

¹ Part 1 of The Constitution Act, Schedule B to the Canada Act 1982 (UK), 1982, c 11

² The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

SCHEDULE "A"

AMENDED NOTICE OF APPLICATION

Form 5.07

2017

No. 463399

SUPREME COURT OF NOVA SCOTIA

Between:

LORNE WAYNE GRABHER

Applicant

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
NOVA SCOTIA as represented by the Registrar of Motor Vehicles**

Respondent

NOTICE OF APPLICATION IN COURT

To: HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA, as represented
by the Registrar of Motor Vehicles

C/O Nova Scotia Department of Justice
1690 Hollis Street, Halifax NS, B3J 2L6
Ph. 902-424-4223

And To: The Nova Scotia Attorney General

C/O Nova Scotia Department of Justice
1690 Hollis Street, Halifax NS, B3J 2L6
Ph. 902-424-4223

**The Applicant requests an Order against the Respondent, Her Majesty the
Queen in Right of Nova Scotia, as represented by the Registrar of Motor
Vehicles**

The Applicant is applying to the Court for:

1. A declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") that the cancellation of the Applicant's license plate which bears the surname of the Applicant (the "Plate")

unjustifiably infringes the section 2(b) (freedom of expression) and section 15 (equality rights) *Charter* rights of the Applicant;

2. A declaration pursuant to section 52(1) of the *Constitution Act, 1982*, that sections 5(c)(iv) and 8 of the *Personalized Number Plates Regulations, NS Reg 124/2005* (the "*Regulation*") infringe section 2(b) of the *Charter* and are therefore of no force or effect; ~~A declaration that the cancellation of the Plate was arbitrary, unreasonable, based on irrelevant considerations, an abuse of authority, a denial of procedural fairness, and otherwise invalid;~~
3. An Order reissuing the Plate;
4. Costs of this Application; and
5. Such further and other relief as this Honourable Court deems just and equitable.

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

Grounds for the order

The Applicant is applying for the relief set out above on the following grounds:

1. Lorne Grabher (hereafter, "Mr. Grabher") is a life-long resident of Nova Scotia whose family, of Austrian/German heritage, immigrated to Canada in 1906. Mr. Grabher's paternal grandfather was a farmer. Mr. Grabher's father was stationed with the army in Cape Breton, where he met his wife and thereafter raised his family.
2. The Applicant and his wife have lived in Dartmouth, Nova Scotia since 2010. Prior to his retirement, Mr. Grabher worked for 26 years as a Correctional Guard for the Province of Nova Scotia Department of Corrections. Mr. Grabher has two children and two grandchildren.
3. Approximately 27 years ago, in or around 1990, the Applicant and his family applied to the Respondent Registrar of Motor Vehicles for, and obtained therefrom, a personalized license plate for Mr. Grabher's father that bore the family's surname (the "Plate"). The Plate was installed on both the front and the back of the family vehicle as required by law, and was an expression of family pride and heritage.

4. For the next 27 consecutive years, through three generations, and assorted family vehicles, the Plate was renewed with the Respondent, the Registrar of Motor Vehicles. For 27 years the Respondent raised neither objection nor concern in regard to the Plate, and each year renewed the Plate without question, hesitation or incident.
5. The Applicant and his family are proud of their ethnic heritage, as well as their history as Canadian immigrants with all the rights and privileges that accrue therefrom. A business owned and operated in Dartmouth, Nova Scotia by Elizabeth Grabher, the spouse of the Applicant, also bears the family surname in the title: Grabher Consulting Advisory Services, which does business as "Grabher Consulting Services".
6. By letter dated December 9, 2016, Mr. Grabher was notified by the Respondent's Office of the Registrar of Motor Vehicles that the Respondent had received "a complaint" about the Plate (the "Complaint"). The Respondent provided no details of the Complaint or the complainant. Rather, the Respondent informed Mr. Grabher that it had concluded that his surname could be "misinterpreted" as a "socially unacceptable slogan", and that the Respondent was cancelling the Plate as of January 13, 2017.
7. Mr. Grabher and his family were, and remain, deeply offended and humiliated by the cancellation of the Plate, and the Respondent's ongoing insult to their heritage and family name, which includes the censoring of expression of the Grabher surname via the Plate.
8. Following the cancellation of the Plate, Mr. Grabher wrote a letter to the Respondent dated December 19, 2016. Mr. Grabher explained the long history of the Plate, that it had been purchased as a gift for his father, that it contained the family surname, and that all of his family were proud of their surname. (The Applicant's son, Troy Grabher, is resident in Alberta and proudly uses a personalized "GRABHER" license plate in that province.) Mr. Grabher requested reconsideration of the cancellation of the Plate.
9. By letter dated December 20, 2016, the Respondent responded by informing Mr. Grabher that the Plate would indeed be cancelled. Once more, the Respondent provided no details of the Complaint or the complainant, or further justification or rationale for its decision.
10. Soon thereafter, the Plate was cancelled by the Respondent.

11. Mr. Grabher retained legal counsel, who wrote to the Respondent on or about March 31, 2017. Counsel reminded the Respondent of Mr. Grabher's rights pursuant to sections 2(b) and 15 of the *Charter*. Counsel for Mr. Grabher informed the Respondent that the cancellation of the Plate not only infringed Mr. Grabher's right to express himself through the Plate, but discriminated against Mr. Grabher on the basis of his Austrian/German heritage by subjecting him to differential treatment in regard to his surname. Counsel informed the Respondent that if the Plate was not reinstated that Mr. Grabher would take further steps to assert his legal rights.
12. The Respondent has communicated the finality of the cancellation of the Plate by way of letter dated April 6, 2017. 13. The Respondent has acted arbitrarily and improperly in cancelling the Plate. The Applicant states that the cancellation of the Plate infringes his rights pursuant to section 2(b) and 15 of the *Charter*. ~~in addition to the cancellation being unreasonable, based on irrelevant considerations, and effected in breach of the principles of procedural fairness.~~

Unconstitutionality of Sections 5(c)(iv) and 8 of the Regulation

13. ~~While not first apparent from its communications to Mr. Grabher, the Respondent relies on sections 5(c)(iv) and 8 of the *Personalized Number Plates Regulation* (the "*Regulation*") enacted pursuant to the *Nova Scotia Motor Vehicle Act*¹ to justify the cancellation of the Plate. Mr. Grabher hereby challenges the constitutionality of section 5(c)(iv) and 8 of the *Regulation* (the "*Challenged Provisions*").~~
14. ~~The requirement that laws be precise is fundamental to the Rule of Law and constitutionalism. Both the state and the citizen must be capable of ascertaining what the law is and how it will be applied so that both know their responsibilities and obligations under the law. In the case at bar, the Registrar determined 27 consecutive times that the Plate contained lawful expression. For 27 years Mr. Grabher relied upon the law in the use of the Plate.~~
15. ~~In December 2016 the Registrar gave notice that she was revoking the Plate. Neither the expression on the Plate nor the law had changed. The Challenged Provisions purport to allow the revocation of a licence plate if it~~

¹ R.S.N.S. 1989, c. 293

“is or may be offensive” in the opinion of the Registrar.² If a government intends to restrict expression its actions must be sufficiently prescribed by law to be justified. The restriction of a fundamental freedom, in this case expression, cannot be justified on the basis that it “might be offensive”. “Might be offensive” provides certainty of law to neither the Registrar nor the citizen. Further, in this case, the Registrar had already repeatedly determined that the expression on the Plate was lawful.

16. Further, a limitation on expression that “may be considered offensive or not in good taste” could prohibit a wide range of protected expression. Such a limitation does not impair freedom of expression as little as possible.

17. The Challenged Provisions are unconstitutionally overbroad and vague. This type of unknowable subjectivity fails to conform to the objective standards established by the Supreme Court of Canada and required by section 1 of the Charter.

18. The Applicant appeals to this Honourable Court for the declarations and relief set out herein.

Witnesses for the Applicant

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

<i>Name of witness</i>	<i>Subject</i>
Lorne Wayne Grabber (Applicant)	History of the Plate, dealings with the Respondent, Impact of cancellation of the Plate
Troy Wayne Grabber (Applicant’s son) and Elizabeth Grabber (Applicant’s wife).	Impact of cancellation of the Plate; Alberta “GRABHER” plate.

² *Regulation*, section 5(c)(iv): section 5 “The Registrar may refuse to issue personalized number plates to an applicant in any of the following circumstances: (c) the plate designation selected by the applicant (iv) in the opinion of the Registrar, contains a combination of characters that expresses or implies a word, phrase or idea that is or may be considered offensive or not in good taste”.

Motion for directions and date

On May 31st, 2017, at 11 AM, the Applicant or his legal representative, will appear before a judge at Supreme Court of Nova Scotia, located at The Law Courts: 1815 Upper Water St. Halifax, NS B3J 1S7, to make a motion for an order giving directions and appointing a time, date, and place for the hearing. The judge may provide directions in your absence, if you or your counsel fail to attend.

Affidavit on motion for directions

The Applicant files the Affidavit of Jay Cameron, ESQ., sworn on May 4, 2017, as evidence on the Motion for Directions. A copy of the Affidavit is delivered to you with this notice.

You may participate

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

Possible final order against you

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

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary at The Law Courts: 1815 Upper Water St. Halifax, NS B3J 1S7 Nova Scotia. Phone: (902) 424-4900 Fax: (902) 424-0524

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

Contact information

The Applicant, through his counsel, will accept service by email (and prefers same), and also designates the following address for service:

Justice Centre for Constitutional Freedoms
253-7620 Elbow Drive SW
Calgary AB T2V 1K2
Phone: 403-475-3622 Fax: 587-747-5310 Email: jcameron@jccf.ca

Documents delivered to this address are considered received by the applicant on delivery.

Further contact information is available from the prothonotary.

Signature

Signed August 29, 2017



Signature of counsel
Jay Cameron, as counsel
for the Applicant, Lorne
Wayne Grabher

Prothonotary's certificate

I certify that this notice of application was filed with the Court on Sept. ____, 2017.

Prothonotary