

2017

No. 463399

SUPREME COURT OF NOVA SCOTIA

Between:

LORNE WAYNE GRABHER

Court Administration

AUG 22 2017

Halifax, N.S.

Applicant

and

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

AFFIDAVIT OF LORNE WAYNE GRABHER

To: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA
SCOTIA, REGISTRAR OF MOTOR VEHICLES

I, Lorne Wayne Grabher, of Dartmouth, Nova Scotia, have knowledge of the facts herein deposed to, except where based on information and belief, in which case I verily believe same to be true.

1. I am a life long resident of the Province of Nova Scotia. My father's family immigrated to Canada in 1906, and is of Austrian/German heritage. My paternal grandfather was a farmer. My father served in the Canadian Armed Forces and was stationed in Cape Breton, N.S., where he met my mother and they thereafter raised their family.
2. My wife and I have lived in Dartmouth, Nova Scotia since 2007. Prior to my retirement, I worked for 26 years with the Nova Scotia Department of Corrections. I have two children and two grandchildren.
3. My family and I are proud of our Austrian/German heritage and are proud of the immigrant history of our family. We are proud of our surname – it tells a story about both our past and our present. We are not ashamed of our immigrant background or our role in Canadian society. My wife operates a business that bears our surname in the title and is registered

as: Grabher Consulting Advisory Services (Grabher CAS")(the "Company").

The Plate

4. Approximately 27 years ago, in or around 1990, my family applied to the Respondent Registrar of Motor Vehicles for a personalized license plate bearing my family's surname (the "Plate"). The Plate was a gift for my father, who was also proud of his Austrian/German heritage. The Plate was installed on my father's vehicle and was an expression of family pride.
5. Three generations of my family have used the Plate: my father, my son and myself. When my son moved to Alberta from Nova Scotia, he applied for and obtained another license plate identical to the Plate (but for the fact that it was issued by an Alberta Registry, as opposed to the Province of Nova Scotia) (the "Alberta Plate"). Attached to this Affidavit as **Exhibit "A"** is a picture of the Alberta Plate. My son has never had difficulty renewing the Alberta Plate and it remains displayed on one of his vehicles in Alberta today.
6. Similarly, for 27 years, three generations, and a number of vehicles, the Respondent in Nova Scotia renewed my family's Plate without objection, hesitation or incident. The Respondent never once raised a concern in regard to the Plate until the incident that gave rise to this Application.

Cancellation of the Plate

7. By letter dated December 9, 2016, I 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"). Attached to my Affidavit as **Exhibit "B"** is the letter of December 9, 2016. The Respondent provided no details of the Complaint. The Respondent did not invite me to respond to the Complaint. Rather, the Respondent informed me that it had unilaterally concluded that my surname could be "misinterpreted" as a "socially unacceptable slogan", and that the Respondent was cancelling the Plate as of January 13, 2017.
8. Despite my protests, both my lawyer and I were told that the December 9, 2016 revocation of the Plate was final. By letter dated December 20, 2016, the Respondent informed me that the Plate would indeed be cancelled. This letter is attached to my Affidavit as **Exhibit "C"**. The Plate was cancelled by the Respondent on or about January 12, 2017. Subsequently, my counsel wrote to the Respondent to warn that the removal of the Plate was an infringement of my *Charter* freedoms. Attached to my Affidavit as **Exhibit "D"** is the letter of my counsel to the

Respondent of March 31, 2017. Attached to my Affidavit as **Exhibit "E"** is the letter of April 6, 2017, from the Respondent saying the December 9, 2016 letter was final.

9. I am a retired man who served the Province of Nova Scotia with diligence and integrity during my working career. Every single work day my last name was prominently displayed on my uniform with the Department of Corrections. The Province never once informed me in all my time working for it that my last name was a "socially unacceptable slogan." I was never told to cover my name up because it might "offend" someone. I am profoundly insulted and humiliated to be now informed that my good name is an offence. The unequal treatment I've been subjected to in regard to my name by the Province is discriminatory. It is the height of bureaucratic hypocrisy.
10. I am increasingly dismayed by the hypersensitivity of some people who are "offended" by every little thing they encounter. I am further dismayed that these "easily offended ones" are not content to be personally offended – they seem uniformly inclined to try to use the power of a supposedly "neutral" state to do something about their whining. Canada is not a country where a person gets to be "offended" at everything. Canadians who complain to the government about every little thing should be politely but firmly informed that we live in a cultural mosaic that respects individual freedoms. Such diversity and freedom are impossible if the governments seeks to eliminate or limit every little thing and every little difference that could be perceived as "offensive" to someone. I am dismayed that some anonymous, misinformed, overly sensitive individual hiding behind their anonymity can dictate to an entire Province that my good name is suddenly an "offensive slogan", when it has never before been any such thing, nor is it today.
11. For 27 years the Respondent renewed the Plate. My last name has not changed. The Respondent never once informed me when I was renewing my Plate that my last name was objectionable. The idea that my name was appropriate for 27 years but is suddenly inappropriate today because one person says so is ridiculous.
12. There are many other persons with the same surname as myself. I have been called on the phone by persons with the same last name from diverse parts of Austria and Germany who have heard of the discriminatory actions of the Respondent in cancelling the Plate. These persons who have contacted me have been outraged that the Province of Nova Scotia has taken it upon itself to decide that our surname is "offensive."

13. I am advised and do verily believe that the Respondent has discriminated against me by cancelling the Plate, and that the Respondent's actions constitute an infringement of the rights and freedoms guaranteed by the *Charter of Rights and Freedoms*, both under section 2(a) (freedom of expression) and section 15 (equality rights).

14. I swear this Affidavit in good faith in support for the Application for the relief set out herein, and for no improper purpose.

SWORN BEFORE ME at Halifax)
Nova Scotia, this 20th day of Aug, 2017)

Lorne Wayne Grabher
) LORNE WAYNE GRABHER
)

S. Drysdale
A Commissioner for Oaths in and for
The Province of Nova Scotia

My Commission Expires:

SARAH DRYSDALE
A Commissioner of the
Supreme Court of Nova Scotia

EXHIBIT "A"

TO THE AFFIDAVIT OF

LORNE WAYNE GRABHER

No. _____
This is Exhibit A referred to in the
affidavit of Lorne Grabher
sworn before me this 22 day of
August, 2017.
S. Drysdale
A Barrister of the Supreme Court of Nova Scotia

SARAH DRYSDALE
A Commissioner of the
Supreme Court of Nova Scotia



EXHIBIT "B"

TO THE AFFIDAVIT OF

LORNE WAYNE GRABHER

No. _____
This is Exhibit B referred to in the
affidavit of Lorne Grabher
sworn before me this 22 day of
August, 2011.
S. Drysdale
A Barrister of the Supreme Court of Nova Scotia

SARAH DRYSDALE
A Commissioner of the
Supreme Court of Nova Scotia



Transportation and Infrastructure Renewal

Office of the Registrar of Motor Vehicles

1672 Granville Street
PO Box 186
Halifax, Nova Scotia
Canada B3J 2N2

Tel: (902) 424-4256
Fax: (902) 424-0772
novascotia.ca/tran

December 9, 2016

Lorne Wayne Grabher
115 Russell Lake Dr
Dartmouth, NS
B2W 6J5

Dear Mr. Grabher,

Re: Cancellation of Personalized Plate GRABHER

Please be advised that the Office of the Registrar of Motor Vehicles has received a complaint about your Personalized Plate GRABHER. While I recognize this plate was issued as your last name the public cannot be expected to know this and can misinterpret it as a socially unacceptable slogan. This letter is to inform you that the registration of Personalized Plate GRABHER will be cancelled as of January 13, 2017.

Your current plate registration may be moved to a regular license plate, or, you may request another personalized plate slogan, provided it is available. Alternatively, should you not wish to obtain a new licence plate, you may apply for a refund for the remainder of the registration fees paid for the current personal plate registration.

If you require any further assistance, please contact Gordon MacDonald at (902) 424-6761 at your convenience.

Sincerely,

Janice Harland, P. Eng.

Director of Road Safety | Registrar of Motor Vehicles

EXHIBIT "C"

TO THE AFFIDAVIT OF

LORNE WAYNE GRABHER

No. _____

This is Exhibit C referred to in the
affidavit of Lorne Grabher
sworn before me this 22 day of
August, 2017.

S. Drysdale
A Barrister of the Supreme Court of Nova Scotia

SARAH DRYSDALE
A Commissioner of the
Supreme Court of Nova Scotia

December 20, 2016

Lorne Wayne Grabher,
15 Russell Lake Dr
Dartmouth NS B2W 6J5

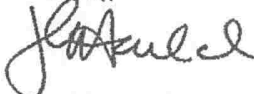
Dear Mr. Grabher,

Re: Cancellation of Personalize Plate GRABHER

Thank you for your letter dated December 19, 2016 regarding your personalized licence plate. I understand this is a unique family name that you are celebrating however, we must use our established guidelines for all personalized plates and our decision to cancel this plate will be upheld.

To reiterate the options available to you, your current plate registration may be moved to a regular licence plate, or you may request another personalized plate slogan, provided it is available. Alternatively, should you not wish to obtain a new licence plate, you may apply for a refund for the remainder of the registration fees paid for the current personal plate registration.

Sincerely,



Janice Harland, P. Eng.
Director of Road Safety | Registrar of Motor Vehicles

EXHIBIT "D"

TO THE AFFIDAVIT OF

LORNE WAYNE GRABHER

No. _____
This is Exhibit D referred to in the
affidavit of Lorne Grabher
sworn before me this 22 day of
August, 2017.
S. Drysdale
A Barrister of the Supreme Court of Nova Scotia

SARAH DRYSDALE
A Commissioner of the
Supreme Court of Nova Scotia



Justice Centre for Constitutional Freedoms

March 31, 2017

Via email (hard copy to follow): Janice.Harland@novascotia.ca

Janice Harland
Director of Road Safety
Registrar of Motor Vehicles
1672 Granville Street
PO Box 186
Halifax, NS B3J 2N2

Dear Ms. Harland,

RE: Violation of Freedom of Expression by Cancelling Personalized License Plate

We represent Lorne Grabher, whose personalized license plate featuring his surname was cancelled as of January 13, 2017.

Background

Mr. Grabher received a letter dated December 9, 2016, from the Office of the Registrar of Motor Vehicles (the "Registrar") which stated that a complaint had been received regarding his personalized license plate. As a result of the complaint, the Registrar decided to cancel Mr. Grabher's plate, despite acknowledging it was an explicit reference to Mr. Grabher's surname. The reason provided for the cancellation was that the plate could be "misinterpreted" as a "socially unacceptable slogan".

Mr. Grabher responded to the Registrar on December 19, 2016, and reminded the Registrar that the license plate had been used by three generations of his family, for over 20 years. Each successive year the plate was renewed, without incident, and at no time was our client advised that the plate had been the subject of complaints or community concern.

Government's obligations when addressing expression in a free society

Canada's Constitution preserves Canada as a free and democratic society. As such, governments at all levels are required to respect fundamental freedoms, including freedom of expression. Practically, this requires that when a concern is raised relating to expression, government

agencies, such as the Registrar of Motor Vehicles, must respect free expression, and only limit expression in a minimal way if to do so is truly necessary to meet a pressing and substantial concern.

In the present case, your office received a complaint concerning Mr. Grabher's license plate. Your office is obligated by the *Canadian Charter of Rights and Freedoms* to respect Mr. Grabher's freedom of expression, including his right to self-fulfillment in publicly expressing his own name,¹ a right which you have respected for over 20 years. In responding to the anonymous complaint, it would be appropriate for your office to inform the complainant that this is someone's surname, and that it is unreasonable to imply a separation between the letters and an offensive interpretation.

Instead of respecting freedom of expression as protected by the *Charter*, your office simply and directly banned Mr. Grabher's last name from appearing on his license plate. Your response is arbitrary and unreasonable. Mr. Grabher's surname is unaltered. It was not obscene or inappropriate during the past 20 years, and it is not obscene or inappropriate today.

Arbitrary action, as in the instant case, is an affront to the dignity of Canadians, and particularly those Canadians who are not of Anglo-Saxon descent. The name Grabher belongs to many Canadians, both personally and in business. For example, Mr. Grabher's wife's own company is Grabher's Consulting. Is the name of her business an offense to the community? We think not.

Your office's "knee jerk" reaction is a response to the complainant's mistaken feeling of offense. Had you considered the matter carefully, the complaint could have been resolved by a simple explanation that the license plate contains a person's surname. Your actions in handling this matter are discriminatory and unjustifiable in Canada's free society.

Conclusion

In a multicultural society, government must respect individuals' heritage and freedom, and encourage community understanding. Pandering to an unreasonable complaint and canceling our client's plate perpetuates misunderstanding, subverts the dignity and heritage of our client and many other Canadians, and violates the freedom of expression protected by the *Charter*.

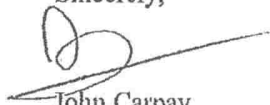
We request that you reinstate Mr. Grabher's personalized license plate, listing his surname, no later than Thursday April 6, 2017.

¹ The freedom of expression is animated by the three purposes: democratic discourse, truth finding and self-fulfillment. See *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927, at p. 976.

If by April 6, 2017, you have not provided us with written confirmation evidencing your commitment to reinstating the license plate, our client will have no choice but to take further steps to assert his legal rights.

Govern yourself accordingly.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Carpay', with a long horizontal stroke extending to the right.

John Carpay

Justice Centre for Constitutional Freedoms

Counsel for Lorne Grabher

EXHIBIT "E"

TO THE AFFIDAVIT OF

LORNE WAYNE GRABHER

No. _____
This is Exhibit E referred to in the
affidavit of Lorne Grabher
sworn before me this 22 day of
August, 2017.
S. Drysdale
A Barrister of the Supreme Court of Nova Scotia

SARAH DRYSDALE
A Commissioner of the
Supreme Court of Nova Scotia

Office of the Registrar of Motor Vehicles

April 6, 2017

Mr. John Carpay
Justice Centre for Constitutional Freedoms
253- 7620 Elbow Drive SW
Calgary, AB T2V 1K2

Dear Mr. Carpay,

RE: Correspondence dated March 31, 2017

I am in receipt of your letter of March 31st, 2017, addressed to Ms. Janice Harland, regarding the cancellation of Mr. Lorne Grabher's personalized license plate.

I have reviewed your letter, and confirm that it does not impact the decision of the Office of the Registrar of Motor Vehicles contained in our letter of December 9, 2016.

Sincerely,



Kevin Mitchell, P. Eng.
Director of Road Safety | Registrar of Motor Vehicles

Enclosure: December 9, 2016 correspondence