

Form 5.07

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No. 4 6 3 3 9 9

SUPREME COURT OF NOVA SCOTIA

Between:

LORNE WAYNE GRABHER

Court Administration

MAY 11 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

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 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.

13. 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 Grabher (Applicant's son) and Elizabeth Grabher (Applicant's wife). | Impact of cancellation of the Plate; Alberta "GRABHER" plate.                           |
|  |   |

#### **Motion for directions and date**

On May 31<sup>st</sup>, 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:

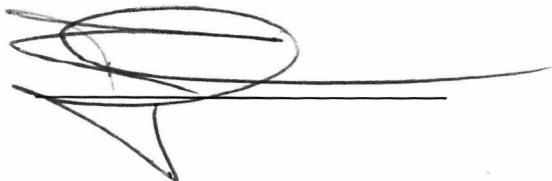
Justice Centre for Constitutional Freedoms  
253-7620 Elbow Drive SW  
Calgary AB T2V 1K2  
Phone: 403-475-3622 Fax: 587-747-5310 Email: [jcameron@jccf.ca](mailto:jcameron@jccf.ca)

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

Further contact information is available from the prothonotary.

**Signature**

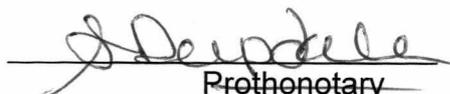
Signed May 10, 2017

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a downward-pointing tail.

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

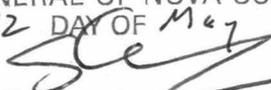
**Prothonotary's certificate**

I certify that this notice of application was filed with the Court on May 11, 2017.

A handwritten signature in black ink, appearing to read 'S. Drysdale', written over a horizontal line.

Prothonotary  
SARAH DRYSDALE  
Deputy Prothonotary

I ACCEPT SERVICE OF THE WITHIN  
DOCUMENT ON BEHALF OF THE ATTORNEY  
GENERAL OF NOVA SCOTIA AS OF THE  
12 DAY OF May . 2017.



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

**SHELDON CHOO**  
A Barrister of the Supreme  
Court of Nova Scotia

|                      |
|----------------------|
| Court Administration |
| MAY 1 1 2017         |
| Halifax, N.S.        |

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

**AFFIDAVIT OF JAY CAMERON**

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

**And To:** The Attorney General for the Province of Nova Scotia

I, JAY CAMERON, Barrister and Solicitor of Calgary, Alberta, make oath and say as follows:

1. I am a lawyer with the Justice Centre for Constitutional Freedoms and am counsel for the Applicant in the within matter.
2. Filed copies of the within Notice of Application and all related materials will be served on the Respondent, as well as the Attorney General for the Province of Nova Scotia, along with a Notice of Constitutional Question as required by the Nova Scotia *Constitutional Questions Act*, RSNS 1989, c 89. No other persons are known to me who have an interest in these proceedings who are not named herein.
3. The claim of the Applicant, set out in the Notice of Application, is for a declaration of infringement of *Charter* and procedural rights in regard to the removal of the Applicant's personalized license plate. The Applicant seeks the reissuance of the Plate. The Respondent cancelled the Plate,

which bears the surname of the Applicant, in December 2016 after 27 years of consecutive use by the Applicant and his family.

4. The parties require direction as to the steps to be taken in advance of a Hearing and for the fixing of the date for such Hearing. The directions sought by the parties will be in relation to not only the time, date and place for the Hearing but with respect to further disclosure and possible cross-examination on Affidavits. As well, dates should be set for the delivery of further Affidavits if sought to be filed prior to the Hearing.
5. The Applicant requests that the Motion for Direction in this matter be scheduled for a ½ hour or less in Chambers at a mutually convenient date for counsel to attend. I do not anticipate that there will be a need to have any additional time in order to obtain directions in this matter.
6. There has been no discussion as yet between counsel to request further disclosure and/or cross examinations but, prior to the date for the Chambers appearance it is anticipated that counsel will discuss these matters.

SWORN BEFORE ME at Calgary, AB, )  
this 4<sup>th</sup> day of May, 2017 )



MARTY MOORE, ESQ.  
A Commissioner for Oaths in and for  
The Province of Alberta

*Barrister + Solicitor*



JAY CAMERON

