

Nova Scotia Court of Appeal

Between:



Lorne Wayne Grabher



Appellant

and

Her Majesty the Queen in Right of the Province of Nova Scotia as represented by the
Registrar of Motor Vehicles

Respondent

Notice of Appeal (General)

To:

Edward A. Gores, Q.C.
Jack Townsend
Nova Scotia Department of Justice
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Counsel for the Respondent

Appellant appeals

The Appellant appeals from the whole of the judgment dated January 31, 2020 in the proceedings in the Supreme Court of Nova Scotia showing Court number Hfx. No. 463399 made by the Honourable Justice Darlene Jamieson.

Order or decision appealed from

The decision was made on January 31, 2020. It was made at Halifax, Nova Scotia.

Grounds of appeal

The grounds of appeal are:

- 1) The Judge erred in law by holding that section 2(b) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") does not apply to an individual's expression on personalized license plates in Nova Scotia.
- 2) The Judge erred in law or in mixed fact and law by ignoring, or alternatively failing to take notice, that one statutory purpose of personalized license plates in Nova Scotia is specifically to provide a platform to the public to express themselves.
- 3) The Judge erred in law in finding that section 5(c)(iv) of the *Personalized Number Plates Regulations*, NS Reg 124/2005 is not unconstitutional on the grounds of vagueness and arbitrariness and by misconstruing the subjective test in the Regulation of "in the opinion of the Registrar".
- 4) The Judge erred in law or in mixed fact and law in failing to find that Nova Scotia's arbitrary assemblage of banned words which are not permitted on personalized license plates is relevant to considerations under the rational connection and minimal impairment stages of the *Oakes* test.
- 5) The Judge erred in mixed fact and law in finding that expression of the name "Grabher" on a personalized license plate promotes sexualized violence and is potentially harmful to the community in the absence of evidence.
- 6) The Judge erred in law or in mixed fact and law in finding that the Province's anglicizing of an Austrian/German name for the purpose of constructing an objectionable phrase, and then censoring it, is not an infringement of section 15 of the *Charter*.
- 7) The Judge erred in law or in mixed fact and law in holding that a) the legislative objective of section 5(c)(iv) was pressing and substantial; and b) the means by which that objective is furthered is proportionate, that is: i) it is rationally connected to the objective; ii) it minimally impairs the right of expression, and iii) it is proportionate

between the effects of section 5(c)(iv) (including a balancing of its salutary and deleterious effects) and the stated legislative objective.

- 8) The Judge erred in law or in mixed fact and law in relying on the report of Professor Rentschler, and in failing to adequately assess and provide reasons for her reliance upon one expert's evidence to the exclusion of another, when the evidence before her was contradictory.
- 9) Such further or other grounds as the Appellant may advise and this Honourable Court may permit.

Authority for appeal

The Appellant relies on the following legislation, Rules, or points of law:

- 1) Civil Procedure Rule 90.48(1); and
- 2) *Judicature Act*, R.S.N.S. 1989, c. 240, s. 38(1)

Order requested

The Appellant says that the Court should allow the appeal and that the judgment appealed from should be set aside and replaced with judgment for the following relief:

- 1) A declaration pursuant to section 24(1) of the *Charter* that the cancellation of the Appellant's Plate unjustifiably infringes the section 2(b) (freedom of expression) and section 15 (equality rights) *Charter* rights of the Appellant;
- 2) A declaration pursuant to section 52(1) of the *Constitution Act, 1982*, that section 5(c)(iv) of the Regulation infringes section 2(b) of the *Charter*, is not saved by section 1, and is therefore of no force or effect;
- 3) An order reissuing the Plate; and
- 4) Costs to the Appellant both in the Court of Appeal and in the judgment appealed from in the Nova Scotia Supreme Court.

Motion for date and directions

The appeal will be heard on a time and date to be set by a judge of the Court of Appeal. The appellant must not more than eighty days after the date this notice is filed, make a motion to a judge of the Court of Appeal to set that time and date and give directions. You will be notified of the motion.

Contact information

The appellant designates the following addresses:

Jay Cameron (JCameron@jccf.ca)
Lisa Bildy (LBildy@jccf.ca)

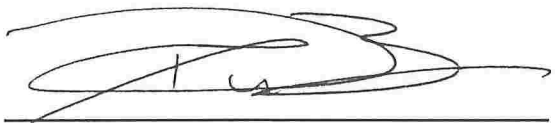
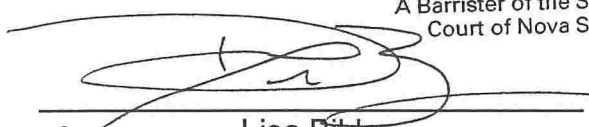
Justice Centre for Constitutional Freedoms

253-7620 Elbow Drive SW
Calgary AB T2V 1K2
Tel: 403-909-3404 or
Tel: 519-852-6967
Fax: 587-352-3233

Documents delivered to this address will be considered received by the appellant on delivery. Further contact information is available to each party through the prothonotary.

Signature


Signed March 6, 2020


for Jay Cameron
as counsel for the Appellant
REBECCA L. HILTZ LeBLANC
A Barrister of the Supreme
Court of Nova Scotia

for Lisa Bildy
as counsel for the Appellant

Registrar's Certificate

I certify that this notice of appeal was filed with the court on March 9, 2020.

REBECCA L. HILTZ LeBLANC
A Barrister of the Supreme
Court of Nova Scotia


Registrar

Caroline McInnes
Registrar