SUPREME COURT OF NOVA SCOTIA
Citation: *Milburn v. Nova Scotia (Attorney General)*, 2025 NSSC 320

Date: 20251009
Docket: Hfx No. 538783
Registry: Halifax

Between:

Chris Milburn, Aris Lavranos, Shelly Hipson, Valerie Henneberry, Susan Kaiser, Carrie Smith, Mark Sawatzky and Nova Scotia Civil Liberties Association

Applicants

v.

The Attorney General of Nova Scotia, Representing His Majesty the King in Right of the Province of Nova Scotia

Respondent

v.

Nova Scotia Health Authority

Intervenor

Decision on Motions
Public Interest Standing / Private Interest Standing

Judge:	The Honourable Justice Denise Boudreau
Heard:	September 2, 2025, in Halifax, Nova Scotia
Counsel:	James Manson and Christopher Fleury, for the Applicants Jeremy P. Smith and Myles Thompson, for the Respondent (AGNS) Scott Campbell, K.C., and Erin McSorley, for the Intervenor (NSHA)

By the Court:

[1] This matter concerns an Application in Court filed on November 29, 2024, and amended on June 3, 2025. The application itself brings a constitutional challenge in relation to a clause of the Nova Scotia *Public Health Information Act*, as well as a related Regulation.

[2] The present decision relates to two related motions that this court has heard. First, the applicants seek public interest standing in respect of their application, which the respondents oppose. Second, the respondents seek summary judgment on the pleadings, arguing that the applicants do not have private interest standing; this motion is opposed by the applicants.

[3] The applicants' motion was heard first. It is agreed by the parties that if the applicants are granted public interest standing, the respondent's motion is moot.

Background

[4] This matter arises as a result of the enactment by the Nova Scotia government in 2024 of new subsection 110(1)(na) in the *Personal Health Information Act*, S.N.S. 2010, c. 41 (hereinafter "the *PHIA*"), as well as the enactment of the *Electronic Health Records Regulations*, N.S. Reg. 132/2024

(hereinafter "the *Regulation(s)*"). The *PHIA* amendment came into effect by way of s. 110 of the *Financial Measures (2024) Act*, S.N.S. 2024, c. 3 (hereinafter the "*FMA*").

[5] In summary, these new provisions are directed towards the creation and/or maintenance of an electronic health/medical records system in the province; they provide, *inter alia*, that the Minister may require that custodians of health care records provide those records to the system.

[6] Section 110(1)(na) of the *PHIA* reads as follows:

> **110(1)** The Governor in Council may make regulations
>
> ...
>
> (na) requiring custodians and classes of custodians to disclose personal health information to the Minister or a person acting on behalf of the Minister for the purposes of planning and management of the health system, resource allocation and creating or maintaining electronic health record programs and services.

[7] The *Regulations* were enacted on July 2, 2024. The relevant portions of these regulations are reproduced here for ease of reference:

> **Definitions**
>
> **2.** In these regulations,
>
> "Act" means the *Personal Health Information Act*;
>
> "agent" means an agent as defined in the Act and includes an EMR provider;
>
> "Department" means the Department of Health and Wellness;

"electronic health record" or "EHR" means an electronic health record as defined in the *Personal Health Information Regulations*;

"electronic medical record" or "EMR" means a practice-based computer application that enables the longitudinal collection of patient information;

"EMR provider" means a vendor, individual or entity that provides to a provider an electronic medical record service, which may include providing the secure storage of a patient's personal health information on the provider's behalf;

"Minister" means the Minister of Health and Wellness;

"*Personal Health Information Regulations*" means the *Personal Health Information Regulations* made under the Act;

"provider" means a regulated health professional who provides healthcare to an individual in the Province;

"provider care team" means any of the following people who are authorized by the provider to assist in providing and administering care to the providers patients:

(i) a care provider,

(ii) a medical professional,

(iii) a clinic or medical office staff member.

Application of regulations

3 (1) Subject to subsection (2), these regulations apply to all providers in the Province.

...

Minister is custodian of personal health information and electronic health records

4. The Minister is the custodian of all personal health information that, for the purpose of creating and maintaining EHR programs and services and the planning and management of the health system, is

(a) disclosed to the Minister by providers in accordance with these regulations;

(b) collected by the Minister under these regulations; and

(c) accessed by authorized users of an EHR program or service.

Individual has right to access personal health information

5. An individual has the right to access their own personal health information, including any information that is collected by the Minister or an agent of the Minister for the purpose of an EHR program or service.

Collection, use and disclosure of Information

6 (1) The Minister, or an agent of the Minister, may require a provider who is a custodian under subclause 3(f)(i) of the Act, or an agent of the provider, to disclose the personal health information of the provider's patients for the purpose of creating and maintaining an EHR.

(2) The Minister must ensure that personal health information contained in an EHR that identifies the patient who is the subject of the personal health information is accessible to only the following people:

(a) the patient who is the subject of the personal health information;

(b individuals who have the express consent of the patient who is the subject of the personal health information;

(c) an agent of the Minister for the purposes of maintaining the operational components of the EHR and who is bound by a confidentiality agreement regarding the personal health information.

...

(5) Personal health information contained in an EHR may be used for the purposes of the planning and management of the health system or for research undertaken in accordance with the Act only when accessed in a form that does not identify the individual who is the subject of the personal health information.

(6) If the personal health information of a provider's patients referred to in subsection (1) is in the possession of an EMR provider, the Minister may require the EMR provider to disclose personal health information on behalf of a provider under subsection (1).

...

Personal health information held in EHR covered by Act

7 (1) The Minister's collection, use and disclosure of personal health information collected from a provider or an EMR provider acting on behalf of a provider under subsection 6(1) and held in an EHR for the purposes of EHR programs and services is governed by the requirements of the Act.

(2) As the custodian of personal health information that is collected, used and disclosed as part of EHR programs and services, the Minister must abide by the requirements of the Act respecting practices to protect personal health information and the privacy of [the] individual to whom that information relates.

> **(3)** As the custodian of an EHR, the Minister must implement the additional safeguards under Section 65 of the Act for personal health information held in an electronic information system as prescribed in Section 10 of the *Personal Health Information Regulations.*

[8] It is the contention of the applicants that s. 110 of the *FMA*, s. 110(1)(na) of the *PHIA*, and the *Regulation(s)* made pursuant to those sections, contravene the *Canadian Charter of Rights and Freedoms*, in that they force health care providers to provide their patients' private medical information to the government. The application seeks a declaration that all of this legislation is unconstitutional, as it infringes sections 7 and 8 of the *Charter*. Their application further seeks an injunction restraining the respondent from ordering or collecting this information. Those applications are not before me at this time. I am only dealing with the motions for standing (as described hereinabove).

Public Interest Standing

[9] According to the affidavits filed in the motion for public interest standing, the applicants have various interests in bringing forth the issues therein.

[10] The applicants Chris Milburn and Aris Lavranos are physicians, licenced to practice medicine in Nova Scotia. As such, they would be custodians of the personal health information of their patients. They are also users of the provincial health care system for their own health care needs. The applicants Shelly Hipson,

Valerie Henneberry, Susan Kaiser, Carrie Smith and Mark Sawatsky are Nova Scotians who have accessed the health care system in the province. The applicant Nova Scotia Civil Liberties Association (hereinafter "NSCLA") is a not-for-profit incorporated Society in the province "dedicated to the defence and advancement of civil liberties in Nova Scotia and Canada".

[11] The affidavits filed indicate the applicants' concerns and reasons for bringing this application. Dr. Lavranos and Dr. Milburn are of the view that any disclosure of their patients' private medical records, in this context, represents a breach of their professional ethics. As users of the system themselves, they are also concerned about their private and personal medical records (in which they would have a high degree of expectation of privacy) being "uploaded" to a government database without their express consent. Ms. Hipson and the other (non-physician) Nova Scotian applicants are also concerned that their medical records are being provided to a government database without their consent. The NSCLA joins the application as an organization whose very "reason for being" relates to privacy and government over-reach issues and concerns.

[12] All of these parties seek public interest standing to bring this application.

Evidentiary Issues

[13] Before addressing the motion for public interest standing on its merits, I should start by addressing the evidentiary issues that were raised. There were numerous objections made by the respondents to the applicants' affidavits. These objections are all individually listed in the respondent's brief. I will not look at each individually, but make reference to them in groups, as did counsel in their submissions.

1. Objections on the basis that the affiant was expressing inadmissible opinions or feelings; also, objections to the attachment of news articles to affidavits.

2. Objections to the parts of the affidavit under the heading "private interest standing".

3. Objection to the affidavit of Marty Moore in its entirety.

Opinions / "feelings" evidence

[14] The respondent has pointed out, quite rightly, that affidavits are not "free-for-alls" where an affiant can throw in all manner of commentary. Affidavits are meant to provide evidence; their purpose is to provide facts that ground the application. The respondent is also correct to point out that here, there are a

number of areas in the applicants' affidavits where they express concerns, "worries", "shock", and so on, none of which really provides the court with any hard "facts" or evidence. These are expressions of nothing more than the affiants' opinions about the matter at hand.

[15] The applicants do not dispute the law relating to affidavits, nor do they dispute that "opinions" can certainly be found in these affidavits. Having said that, as they note, admissibility of evidence depends on its relevance. In the view of the applicants, their opinions and concerns are, in this case, quite relevant. They provide, in each affiant's case, their reasons for becoming involved in this matter and demonstrate their keen interest in and concern for the privacy of their (and their patients') medical records.

[16] In my view, in this case, this is a matter of weight. I agree that there is some limited probative value in understanding each applicant's personal situation and concerns. In cases involving public interest standing, it is relevant to consider whether the applicants are involved for the right reasons, and whether they are sincere in their convictions. It is also, I think, relevant to note that some of the affiants say that they are now limiting the information that they give health care providers, because they are worried about the information being released.

[17] Having said that, that type of evidence is of limited use, and for those limited purposes. Other opinions noted in the affidavits are entirely outside the realm of lay opinion, and I shall disregard them entirely. For example, any applicant's opinion that the impugned legislation is "unconstitutional"; or that it represents a "*Charter* breach"; or that the applicants "meet the test for standing"; or that the legislation runs afoul of physicians codified ethical standards; or that this (or any) database might be vulnerable to "breaches".

[18] All of those types of opinions are entirely outside the rules for appropriate lay-person affidavit evidence, and I will completely ignore any such commentary. I also see as inadmissible the evidence from some of the affiants about their knowledge and/or belief about "other alleged government-related" privacy breaches. This type of evidence appears to be based on hearsay, it is unconfirmed, and it is irrelevant in any event.

Evidence related to "Private interest" / Articles

[19] There are parts of some affidavits headed "private interest standing". Despite that heading, the information therein merely outlines the affiants' specific circumstances and their particular interest in these matters. I would allow some of that evidence to have some limited relevance to the matter of public interest

standing, for the same reasons and under the same parameters as noted hereinabove.

[20] I do note that some affiants have attached news articles or press releases. In my view, there is no probative value in those documents. First, the fact that any applicant has *seen* a press release or news article is entirely immaterial. Second, the contents of the articles cannot be introduced for their truth. Therefore, they are of no use. I would agree to strike any attached new articles and any reference to them.

Affidavit of Marty Moore

[21] Mr. Moore is the director of Charter Advocates Canada, the group of lawyers who are assisting the applicants with this application. His affidavit provides information about the group, about their history and expertise in relation to constitutional and *Charter* issues, and provides particular information about the lawyers directly involved here, Mr. Marsden and Mr. Fleury.

[22] The respondent objects, noting that Charter Advocates Canada is not a party to this litigation and that this affidavit is irrelevant.

[23] The applicants respond that this affidavit goes directly to the issues raised by the third branch of *Downtown Eastside* (to be discussed later) to whether the present application is an effective and efficient means to bring the matter to court.

[24] I agree. In determining whether to grant public interest standing, a court must assess whether the application is going to be prosecuted fully and professionally. Evidence that the matter is being handled by senior and experienced counsel, with appropriate funding, is clearly admissible and helpful evidence.

[25] I also note that a similar affidavit from Mr. Moore, tendered in support of the very same evidence and issues, was accepted by the Federal Court in granting public interest standing in a case before it (*MacKinnon v. Canada (Attorney General)*, 2025 FC 422).

Public Interest Standing / Analysis

[26] The law relating to public interest standing was set down in *Canada (Attorney-General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 (hereinafter "*Downtown Eastside*"). The Supreme Court of Canada starts by concisely describing the competing values that underpin these cases, and by identifying the three factors that must be considered:

> [1] This appeal is concerned with the law of public interest standing in constitutional cases. The law of standing answers the question of who is entitled to bring a case to court for a decision. Of course it would be intolerable if everyone had standing to sue for everything, no matter how limited a personal stake they had in the matter. Limitations on standing are necessary in order to ensure that courts do not become hopelessly overburdened with marginal or redundant cases, to screen out the mere "busybody" litigant, to ensure that courts have the benefit of contending points of view of those most directly affected and to ensure that courts play their proper role within our democratic system of government: *Finlay v. Canada (Minister of Finance),* [1986] 2 S.C.R. 607, at p. 631. The traditional approach was to limit standing to persons whose private rights were at stake or who were specifically affected by the issue. In public law cases, however, Canadian courts have relaxed these limitations on standing and have taken a flexible, discretionary approach to public interest standing, guided by the purposes which underlie the traditional limitations.
>
> [2] In exercising their discretion with respect to standing, the courts weigh three factors in light of these underlying purposes and of the particular circumstances. The courts consider whether the case raises a serious justiciable issue, whether the party bringing the action has a real stake or a genuine interest in its outcome and whether, having regard to a number of factors, the proposed suit is a reasonable and effective means to bring the case to court: *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236, at p. 253. The courts exercise this discretion to grant or refuse standing in a "liberal and generous manner" (p. 253).

[27] The court later noted that these three factors are not meant to represent a hard and fast "checklist", but rather are factors to be assessed in a more global fashion, keeping in mind that the granting of standing is an exercise of discretion:

> [19] The chambers judge, supported by quotations from the leading cases, was of the view that the law sets out three requirements – something in the nature of a checklist – which a person seeking discretionary public interest standing must establish in order to succeed. The respondents, on the other hand, contend for a more flexible approach, emphasizing the discretionary nature of the standing decision. The debate focuses on the third factor as it was expressed in *Borowski* – hat there is no other reasonable and effective manner in which the issue may be brought to court – and concerns how strictly this factor should be defined and how it should be applied.
>
> [20] My view is that the three elements identified in *Borowski* are interrelated factors that must be weighed in exercising judicial discretion to grant or deny

> standing. These factors, and especially the third one, should not be treated as hard and fast requirements or free-standing, independently operating tests. Rather, they should be assessed and weighed cumulatively, in light of the underlying purposes of limiting standing and applied in a flexible and generous manner that best serves these underlying purposes.

[28] The court went on to note some of the traditional concerns of "the law of standing": the proper allocation of scarce judicial resources and the need to weed out mere "busybodies", who are pursuing their causes of choice; the need to ensure that courts are provided with thorough contending points of view on issues; and the proper role of the courts (thereby creating the need for a "justiciable" issue to be brought forward).

[29] The court in *Downtown Eastside* also noted and explained the principle of "legality" in the context of constitutional law, as another concern that might be factored into the analysis:

> [31] The principle of legality refers to two ideas: that state action should conform to the Constitution and statutory authority and that there must be practical and effective ways to challenge the legality of state action. This principle was central to the development of public interest standing in Canada. For example, in the seminal case of *Thorson*, Laskin J. wrote that the "right of the citizenry to constitutional behaviour by Parliament" (p. 163) supports granting standing and that a question of constitutionality should not be "immunized from judicial review by denying standing to anyone to challenge the impugned statute" (p. 145). He concluded that "it would be strange and, indeed, alarming, if there was no way in which a question of alleged excess of legislative power, a matter traditionally within the scope of the judicial process, could be made the subject of adjudication" (p. 145 (emphasis added)).

[30] I note that the issue of "legality" in this context was also addressed in *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27:

> (2) Role of Legality and Access to Justice in Developing Public Interest Standing
>
> [37] Legality and access to justice are woven throughout the history of public interest standing. In *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, for example, the Court relied primarily on the principle of legality to recognize the judicial discretion to grant public interest standing (p. 163). In that case, the Court granted a litigant standing to challenge a law that did not directly affect him, reasoning that a constitutional question should not "be immunized from judicial review by denying standing to anyone to challenge the impugned statute" (p. 145).
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> [38] Legality was again at issue in *Nova Scotia Board of Censors v. MacNeil*, [1976] 2 S.C.R. 265, a case in which the Court granted standing even though it would have been possible for someone more directly affected by the law to initiate private litigation. In that case, the Court permitted a newspaper editor – a member of the public – to challenge censorial powers granted to an administrative body. Theatre owners and operators were more directly affected by the legislation than the general public, but the Court reasoned that challenges from these individuals were unlikely. Since there was "no other way, practically speaking, to subject the challenged Act to judicial review," the Court granted a member of the public standing to seek a declaration that the legislation was constitutionally invalid (p. 271).
>
> [39] Access to justice featured alongside the principle of legality in *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607, this Court's first post-*Charter* case on public interest standing. There, the Court granted standing and emphasized "the importance in a federal state that there be some access to the courts to challenge the constitutionality of legislation" (p. 627). It also observed that the rationale behind discretionary standing was the public interest in maintaining respect for "the limits of statutory authority" (pp. 631-32).

[31] I will move to an assessment of each of the *Downtown Eastside* factors.

Serious justiciable issue

[32] *Downtown Eastside* tells us:

> [42] To constitute a "serious issue", the question raised must be a "substantial constitutional issue" (*McNeil*, at p. 268) or an "important one" (*Borowski*, at p. 589). The claim must be "far from frivolous" (*Finlay*, at p. 633), although courts should not examine the merits of the case in other than a preliminary manner. For example, in *Hy and Zel's*, Major J. applied the standard of whether the claim was so unlikely to succeed that its result would be seen as a "foregone conclusion" (p. 690). He reached this position in spite of the fact that the Court had seven years earlier decided that the same Act was constitutional: *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713. Major J. held that he was "prepared to assume that the numerous amendments have sufficiently altered the Act in the seven years since *Edwards Books* so that the Act's validity is no longer a foregone conclusion" (*Hy and Zel's*, at p. 690). In *Canadian Council of Churches,* the Court had many reservations about the nature of the proposed action, but in the end accepted that "some aspects of the statement of claim could be said to raise a serious issue as to the validity of the legislation" (p. 254). Once it becomes clear that the statement of claim reveals at least one serious issue, it will usually not be necessary to minutely examine every pleaded claim for the purpose of the standing question.

[33] There can be no question that the issue that will be before the court in the present application is "justiciable", in that it seeks for the court to review the constitutionality/*Charter* compliance of legislation. Clearly that is a question within the purview, jurisdiction and authority of this court.

[34] The question as to whether or not the issue is "serious", however, is in dispute between these parties. The applicants say that the question(s) is (are) "far from frivolous" and therefore this factor should favour the granting of public interest standing.

[35] The respondent, on the other hand, questions the merits of the application itself. The respondent is of the view that this application is doomed to fail on its merits. Where such is the case, says the respondent, an application cannot possibly raise a "serious" issue.

[36] As a first point, the respondent notes that, as presently worded, the application puts forward the concern that the disclosure of this information would be to "the Minister", herself, and that the alleged breaches of privacy occur because of disclosure "to the Minister". I provide a sampling here from the application itself:

> ...
>
> 4. Clause 110(1)(na) of the *PHIA* now gives the Governor in Council the power to make regulations requiring custodians and classes of custodians to disclose personal health information [to] the Minister, without limitation ...
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> ...
>
> 30. Dr. Lavranos. Dr. Milburn, Ms. Hipson, Ms. Henneberry, Ms. Smith, Mr. Sawatzky and Ms. Kaiser have not consented to the disclosure of their personal health information to the Minister, as contemplated by section 110 ...
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> 31. Further, Drs. Lavranos and Milburn do not wish for professional ethical reasons to be forced to disclose personal health information to the Minister as contemplated by section 110 ...

[37] The respondent notes that a reading of the impugned legislation clearly demonstrates that the Minister, herself, does not access the information. The Minister may access some information, but only for the "purposes of planning and management of the health system", and then only "in a form that does not identify

the individual". Therefore, says the respondent, the application is fatally flawed as it is presently framed, and could not possibly succeed.

[38] As a second point, the respondent further notes that even if this application could be read to include another government actor or organization as receiving the information (in the place of "the Minister"), the application remains flawed in its view, as the circumstances do not raise any true privacy issues for the public. The respondent notes that a reading of the legislation in its entirety shows that private medical information can only be accessed by 1) the patient themselves; 2) individuals who have the express consent of the patient; 3) an agent (to maintain the system) who would be bound by a confidentiality agreement; or 4) the Minister in limited circumstances and form (as noted hereinabove).

[39] In the respondent's view, the private medical information on this database will be tightly controlled, and no one will be accessing it without the patient's consent (except in very specific and protected circumstances). The respondent submits that this legislation therefore does not raise any privacy concerns whatsoever, and that this application has no chance of success. The respondent argues that where an application is without merit and doomed to fail, it must also be "non-serious".

[40] The applicants respond, first, that the wording in their application "to the Minister" simply mirrors the wording from the legislation itself. They note that, clearly, nobody is under the impression that the Nova Scotia Minister of Health and Wellness will be personally looking at private medical information, nor is that the concern that caused this application to be filed. The applicants further say that, in their view, it is the very creation/existence of this database by the government, and the uploading of private information to it, which causes the applicants to believe that a *Charter* breach is made out.

[41] The applicants further acknowledge that it is the Nova Scotia Health Authority, as the Minister's "agent" in this context, who is designated as the "creator" and "administrator" of this digital health record database. The applicants note that no matter which department or government agency creates and maintains this database, their concerns remain the same.

[42] Furthermore, say the applicants, any substantive questions as to the merits of this application, and/or whether or not this application can or will succeed, are questions for another day. The applicants note the *Downtown Eastside* decision warned against any detailed or substantive assessment of the merits of an application, at this early stage of a proceeding.

[43] I agree and accept the applicants' submissions in both of these regards. Their application does mirror the language in the *Act* ("to the Minister …", "collected by the Minister"), but a complete reading of their application would make it clear that they are not limiting their submissions to a situation where the Minister herself receives the information.

[44] Furthermore, the question of the fundamental and substantive merits of this (or any) application are not a reason to deny public interest standing. *Downtown Eastside* was clear that, beyond a preliminary review, such an analysis would be inappropriate at this stage. This matter is at the pleadings stage (i.e. very early), and I do not have a full record before me, as I would if I were hearing the application. In my view, it would be entirely inappropriate and unfair to embark upon a full review of the merits now.

[45] Suffice it to say, for my purposes, that I find there is a justiciable issue here as to whether the legislation is *Charter* compliant. The matter involves privacy issues surrounding medical records and their disclosure to a government website. That issue is sufficiently serious that, in my view, the first factor in *Downtown Eastside* would favour the granting of public interest standing. I make no comment about the merits of the application; any debate or question about that is reserved for another day.

The party bringing the action has a "real stake" or a "genuine interest" in its outcome

[46] As has been noted in many cases, the fact that a person is "interested" in an issue, perhaps even acutely interested, does not necessarily mean that they have "an interest" as that expression is meant in this context. Again, I turn to the *Downtown Eastside* decision for clarity:

> [43] In *Finlay*, the Court wrote that this factor reflects the concern for conserving scarce judicial resources and the need to screen out the mere busybody (p. 633). In my view, this factor is concerned with whether the plaintiff has a real stake in the proceedings or is engaged with the issues they raise. The Court's case law illustrates this point. In *Finlay*, for example, although the plaintiff did not in the Court's view have standing as of right, he nonetheless had a direct, personal interest in the issues he sought to raise. In *Borowski*, the Court found that the plaintiff had a genuine interest in challenging the exculpatory provisions regarding abortion. He was a concerned citizen and taxpayer and he had sought unsuccessfully to have the issue determined by other means (p. 597). The Court thus assessed Mr. Borowski's engagement with the issue in assessing whether he had a genuine interest in the issue he advanced. Further, in *Canadian Council of Churches*, the Court held it was clear that the applicant had a "genuine interest", as it enjoyed "the highest possible reputation and has demonstrated a real and continuing interest in the problems of the refugees and immigrants" (p. 254). In examining the plaintiff's reputation, continuing interest, and link with the claim, the Court thus assessed its "engagement", so as to ensure an economical use of scarce judicial resources (see K.T. Roach, *Constitutional Remedies in Canada* (loose-leaf), at ¶ 5.120).

[47] Also, in *Council of Canadians (supra)*, the court noted:

> [102] ... [A] plaintiff seeking public interest standing has never been required to show that its interests are precisely as narrow as the litigation it seeks to bring. Instead, it must demonstrate a "link with the claim" and an "interest in the issues" ....

[48] In that context, I find that the applicants have demonstrated an "interest" in this matter, sufficient to meet the requirements of this factor. The individual applicants are Nova Scotian direct users of their provincial health care system. Their private medical records are *prima facie* captured by this legislation. They have honestly held concerns about the effects of this legislation. The physician applicants are similarly interested, as well as further involved as holders of patient records; they have expressed genuine concerns with (what they understand to be) their ethical obligations.

[49] The NSCLA is an organization dedicated to the issue of privacy and privacy concerns as between citizens and their government. Of course, as an organization, the NSCLA has no health care needs and therefore no health care records; it might fairly be said that they have no stake in this matter since they have no records to protect. Were this application brought by the NSCLA alone, it might fairly be argued that their interest was, although genuine, somewhat "theoretical". However, the NSCLA had joined in this application with a group of persons who, in my view, do have a legitimate personal stake and interest in the proceeding. In that context, and given their expertise, interest and background in privacy issues, I find the NSCLA should be included as well.

[50] I also note that the applicants have secured experienced legal representation, further demonstrating their commitment to the proper and serious advancement of their application and their arguments.

[51] The respondent has argued that the (non-NSCLA) applicants are in the same position as every other Nova Scotian user of the health care system and, therefore, should not be granted public interest standing, since they have no special or peculiar interest beyond that of every other Nova Scotian user of that system. In fact, the respondent's position is that, as the matter currently stands, *no one* would have standing (either public or private) to bring this application.

[52] In response, the applicant submits that such cannot possibly be the case. They note that such would effectively render this legislation immune from judicial review.

[53] I return to the principle of "legality" as noted in *Downtown Eastside* (and quoted hereinabove): that "state action should conform to the Constitution and statutory authority and that there must be practical and effective ways to challenge the legality of state action" (para. 31). Clearly, there needs to be a forum within which citizens can challenge legislation. Further, the fact that others might be similarly affected (or perhaps even more affected) does not mean that these

applicants do not meet the requirement of having substantive "links" to the claim and "interests" in the issues.

[54] I find that this factor also favors the granting of public interest standing to these applicants.

Reasonable and effective means of bringing the matter to court

[55] *Downtown Eastside* tells us:

> [50] The Court's jurisprudence to date does not have much to say about how to assess whether a particular means of bringing a matter to court is "reasonable and effective". However, by taking a purposive approach to the issue, courts should consider whether the proposed action is an economical use of judicial resources, whether the issues are presented in a context suitable for judicial determination in an adversarial setting and whether permitting the proposed action to go forward will serve the purpose of upholding the principle of legality. A flexible, discretionary approach is called for in assessing the effect of these considerations on the ultimate decision to grant or to refuse standing. There is no binary, yes or no, analysis possible: whether a means of proceeding is reasonable, whether it is effective and whether it will serve to reinforce the principle of legality are matters of degree and must be considered in light of realistic alternatives in all of the circumstances.
>
> [51] It may be helpful to give some examples of the types of interrelated matters that courts may find useful to take into account when assessing the third discretionary factor. This list, of course, is not exhaustive but illustrative.
>
> - The court should consider the plaintiff's capacity to bring forward a claim. In doing so, it should examine amongst other things, the plaintiff's resources, expertise and whether the issue will be presented in a sufficiently concrete and well-developed factual setting.
> - The court should consider whether the case is of public interest in the sense that it transcends the interests of those most directly affected by the challenged law or action. ...
> - The court should turn its mind to whether there are realistic alternative means which would favour a more efficient and effective use of judicial

> resources and would present a context more suitable for adversarial determination. Courts should take a practical and pragmatic approach. ...
>
> ...

[56] In my view, all three of these considerations favor the applicants. The applicants are well-positioned to bring forward this application, both due to their interest in the matter as well as the resources they bring to the table. They represent a group of health care users who have relevant concerns, including two physicians who can also bring the concerns of "health care providers" to the court. They have hired senior counsel, experienced (in fact, specialized) in matters of constitutional and *Charter* compliance. I am quite comfortable in saying that this matter will be "concretely" presented in a "well developed factual setting".

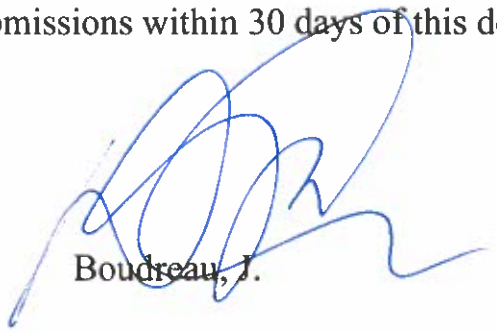
[57] In my view, this case is of public interest. The application engages privacy issues in areas of very high expectations of privacy (medical records). I accept on the basis of the affidavits that the applicants are very interested and concerned, and it seems reasonable to expect that other Nova Scotians would be interested as well. I acknowledge that the parties are in dispute as to the substantive merits of this application, but that argument is for another day.

[58] Lastly, and taking a practical and pragmatic approach, I see no other alternative to this application as a way of bringing this issue forward; none has been presented.

[59] In conclusion, I find that the applicants should be granted public interest standing in relation to their Amended Application in Court, filed November 29, 2024.

[60] Given that decision, I see no need to address the respondent's Motion for Summary Judgment.

[61] I note the applicants' Amended Notice of Application provides that they seek no costs in "this proceeding" (p. 2, para. (i)). I do not know if that includes this motion. I leave it to the parties to discuss costs; if they cannot come to agreement, I will accept written submissions within 30 days of this decision.



Boudreau, J.