

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Dixon v. Nova Scotia (Public Safety)*,**  
2011 NSCA 15

**Date:** 20110203  
**Docket:** CA 343192  
**Registry:** Halifax

**Between:**

Delilah Delores Dixon and Peter Sheldon MacKinnon

Appellants

v.

The Director of Public Safety

Respondent

**Judge:** The Honourable Justice David P.S. Farrar in Chambers

**Motion Heard:** February 3, 2011, in Halifax, Nova Scotia

**Held:** Motion granted.

**Counsel:** Tony Mozvik and James Snow, for the appellants  
Glenn Anderson, Q.C. and Terry Potter, for the respondent

**Decision:**

[1] The appellants, Delilah Delores Dixon and Peter Sheldon MacKinnon, seek leave to appeal and appeal from the decision of The Honourable Justice Patrick J. Murray reported as 2011 NSSC 5 and Order dated January 18, 2011.

[2] The order requires the appellants to vacate their home at 1437 Bay St. Lawrence Road, Aspy Bay, Nova Scotia, for a period of 70 days beginning at 12:01 p.m. on February 4th, 2011.

[3] By notice of motion dated January 28, 2011, the appellants move for a stay of the provisions of the Order requiring that the premises be vacated. The stay is sought pending this appeal.

**Background**

[4] The appellants with their three children, D. age 7, T. age 4, and J.R. age 1 reside at 1437 Bay St. Lawrence Road (the Property).

[5] In July, 2010, they were served with a notice by the Director of Public Safety of an application for a community safety order under the **Safer Communities and Neighbourhoods Act**, S.N.S. 2006, c. 6 (the **Act**). The matter was originally scheduled to be heard on July 30, 2010, but was eventually adjourned and heard on October 6, 7, 13, 14 and 15th with the trial judge rendering a written decision on January 6, 2011. As a result of the trial judge's decision, an order was issued on January 18, 2011, requiring the Property to be vacated on or before February 4, 2011, at 12:01 p.m. and enjoining the appellants from re-entering or re-occupying the property for a period of 70 days.

[6] The appellants seek leave to appeal and appeal from that Order alleging that the trial judge:

1. failed to properly interpret the meaning of the term "habitually used" as that term is used in s. 7(1)(a) of the **Act**;
2. failed to properly interpret the meaning of the term "reasonable inference" as that term is used in s. 7(1)(a) of the **Act**; and

3. failed to properly interpret s. 7(1)(a) and 7(1)(b) of the **Act** in regard to the need for a community safety order.

[7] The parties do not dispute that the test to be applied is based on the decision of Hallett, J.A. in **Fulton Insurance Agencies Ltd. v. Purdy**, [1990] N.S.J. No. 371 (Q.L.) (N.S.C.A.). The test has two parts. The applicant can be successful if it is established, on a balance of probabilities, that there is an arguable issue raised by the appeal, irreparable harm to the appellant would occur should the stay not be granted (assuming the appeal is ultimately granted); and the appellant will suffer greater harm if this stay is not granted than the respondent if the stay is granted.

[8] The Director of Community Services, in its brief filed in opposition to the motion has conceded, quite appropriately, the arguable issue part of the test and, therefore, I need only consider the final two parts of the test.

### **Irreparable Harm**

[9] In **Alementary Services Ltd. v. Nova Scotia (Alcohol and Gaming Division)**, 2009 NSCA 61, Chief Justice MacDonald was considering a situation where the Nova Scotia Utility and Review Board suspended the Split Crow Pub's liquor license for two days as a result of regulatory infractions. Chief Justice MacDonald granted the stay noting two reasons relating to irreparable harm as follows:

7 In this motion, I conclude that irreparable harm will result without a stay. I say this because of the cumulative effect of the following two factors.

8 Firstly, I am satisfied that without a liquor license, the Pub will close its doors for the duration of the suspension. Its losses, while not impossible, would be difficult to calculate. Furthermore, should the appeal be allowed, it is unclear from whom if anyone these losses could be recovered.

9 Secondly, without the stay, the suspension will have been served by the time the appeal is heard. This would effectively deny the Pub its right to appeal.

[10] Similarly, I am satisfied, that the cumulative effect of the following factors leaves me to conclude that irreparable harm would result without a stay.

[11] In the affidavit filed in support of the motion, the appellant, Ms. Dixon, deposes that her middle child, T., is autistic and attends North Highlands Elementary School, approximately 500 metres from their home. If she is forced to leave the home, T., because of her condition, she is unable to take the bus to school. She also says that the family does not have alternative living arrangements and would be forced to leave the community and remove the children from their present school. The potential damage to the children, and in particular, to T. being unable to attend school or in having difficulty getting to school cannot be measured in monetary terms.

[12] Secondly, as in **Alementary Services, supra**, without the stay, the 70 day period for vacating the house will have been served by the time the appeal is heard. This would effectively deny the appellants their right to appeal.

### **Balance of Convenience**

[13] The balance of convenience also favours the granting of a stay. Again, without the stay, the appeal would be rendered moot. The balance of convenience also favours the children remain in their present school.

[14] As well, there has been two interim orders in place, with conditions, since July, 2009, pending the trial decision in this matter, a period of over five months. There is no evidence or suggestion that the orders have been breached or that there has been any harm to the community during that interim period. Taking these three factors into consideration I am satisfied that the balance of convenience also favours the appellants.

[15] I am prepared to grant the stay on the following terms and conditions:

1. paragraphs 5 and 6 of the Order are hereby stayed;
2. the date on which the stay ceases to be of effect is the issuance of a subsequent order of this Court following the hearing of the appeal;
3. save and accepting the appellants, their three children and a babysitter, whose name shall be provided to the Director of Public Safety in advance, all persons shall vacate the Property each and every day

from the hour of 11:00 p.m. and be enjoined from re-entering the Property each and every day until the hour of 6:00 a.m.;

4. service of this Order on the Appellants shall be deemed to have been effected upon its issuance;
5. costs of this motion shall be costs in the cause.
6. the remaining provisions of the Order remain in full force and effect.

Farrar, J.A.