

NOVA SCOTIA COURT OF APPEAL

Citation: *Buxton v. Nova Scotia (Attorney General)*, 2025 NSCA 67

Date: 20250915

Docket: CA 542012

Registry: Halifax

Between:

Paul Gerard Buxton

Appellant

v.

The Attorney General of Nova Scotia, representing His Majesty
the King in Right of the Province of Nova Scotia, The Minister of Health
and Wellness, The Department of Health and Wellness, and The MSI Medical
Consultant, Valerie Ross

Respondents

Judge: Gogan, J.A.

Motion Heard: August 21, 2025, in Halifax, Nova Scotia in Chambers

Written Decision: September 12, 2025

Held: Motion to stay dismissed, motion to amend granted in part.

Counsel: Paul Gerard Buxton, self-represented, appellant
Jeremy P. Smith, for the respondents

Chambers Decision:

Introduction

[1] This decision deals with two motions brought by the appellant, Paul Gerard Buxton. On the first motion, Mr. Buxton seeks to stay publication of the decision under appeal. On the second, he seeks permission to amend his notice of appeal.

[2] I heard both motions in chambers on August 21, 2025. As I will explain, Mr. Buxton's stay motion is dismissed and his motion to amend is granted in part.

Background

[3] I begin by providing a brief overview of the history of Mr. Buxton's claims thus far.

[4] In 2020, Mr. Buxton found himself in need of hip replacement surgery. The waiting list held the prospect his surgery would not take place for years. He chose to have the procedure completed at a private clinic in Ontario. The surgery took place on October 16, 2020. Mr. Buxton paid the associated costs and expenses himself and then investigated whether he could be reimbursed. He reviewed information available on the Nova Scotia Department of Health and Wellness website. He sought reimbursement, but his claim was denied.

[5] Mr. Buxton commenced an action against the respondents alleging misfeasance in public office, breach of trust, and negligence. A trial was held in the Supreme Court of Nova Scotia on October 31, 2024. Mr. Buxton's claims were dismissed by Justice Pierre Muise in a decision dated February 6, 2025, and subsequently reported as *Buxton v. Nova Scotia (Attorney General)*, 2025 NSSC 85. In his decision, the trial judge considered s. 7 of the *Hospital Insurance Regulations*¹ as well as the Department of Health *Out of Province Travel and Accommodation Assistance Policy* and found Mr. Buxton was ineligible for reimbursement. He then dismissed all of Mr. Buxton's tort claims.

[6] Mr. Buxton appealed on March 25, 2025, listing 13 grounds of appeal, including ground 12 alleging the trial judge erred in law by not answering the questions he was asked. Two days later, Mr. Buxton amended his notice of appeal by adding an additional ground. The respondents filed a notice of contention on

¹ These regulations are made pursuant to the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197.

April 7, 2025, and an amended notice of contention on July 3, 2025 (with leave of the court). A motion for date and directions was held on June 25, 2025, and the hearing of the appeal set for December 4, 2025. Notably, Mr. Buxton's appeal book is due by September 15, 2025, and his factum, book of authorities, and fresh evidence motion by September 22, 2025.

[7] Mr. Buxton filed the current motions on August 11, 2025.

The Stay Motion

[8] In this first motion, Mr. Buxton alleges the judgment of the lower court contains "false statements that impugn my character and damage my reputation". The relief he seeks is to remove the trial decision from publication, including digital publication services such as CanLII and the Courts of Nova Scotia website. Mr. Buxton framed his motion and argued it on the basis that a stay would provide him with the remedy he was seeking. The respondent answered the motion as it was argued.

[9] A stay is a discretionary remedy available in this court under *Civil Procedure Rule* 90.41 which provides:

90.41 Stay of execution

- (1) The filing of a notice of appeal shall not operate as a stay of execution or enforcement of the judgment appealed from.
- (2) A judge of the Court of Appeal on motion of a party to an appeal may:
 - (a) grant an interim stay on such terms as may be just, until the completion of the hearing of the motion for a stay;
 - (b) upon completion of the hearing of a motion for a stay, order stayed the execution and enforcement of any judgment appealed from or grant such other relief against such a judgment or order, on such terms as may be just, pending the disposition of the appeal.

[Emphasis Added]

[10] The principles guiding the determination of whether a stay is appropriate are well known and were recently reviewed by Justice Derrick in *Stanton v. Stanton*, 2025 NSCA 38 (paras. 19-24). Mr. Buxton correctly identified the relevant principles and advanced his arguments accordingly.

[11] The challenge for Mr. Buxton is that the relief he seeks does not align with his motion. A stay is a remedy available to prevent execution or enforcement of the judgment being appealed pending the hearing of the appeal. In this case, the judgment under appeal dismissed all of Mr. Buxton's claims and there is no operative provision to stay. While I acknowledge *Rule 90.41(2)(b)* provides authority to grant "such other relief against such a judgment or order, on such terms as may be just", Mr. Buxton did not provide any authority to support use of a stay to prevent publication of a trial judge's decision.

[12] The relief Mr. Buxton seeks is akin to the more specific relief available under *Rule 85.04* which provides:

85.04 Order for confidentiality and interim order

(1) A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the *Canadian Charter of Rights and Freedoms* and the open courts principle.

(2) An order that provides for any of the following is an example of an order for confidentiality:

- (a) sealing a court document or an exhibit in a proceeding;
- (b) requiring the prothonotary to block access to a recording of all or part of a proceeding;
- (c) banning publication of part or all of a proceeding;
- (d) permitting a party, or a person who is referred to in a court document but is not a party, to be identified by a pseudonym, including in a heading.

[13] Confidentiality and sealing orders have been granted by this court in appropriate circumstances.² But such orders are exceptional remedies. Court records must be open to the public and proceedings must be accessible both directly by individuals and indirectly through various forms of media access (*Rule 85.01(1)* and (3)). The open court principle is fundamental to our justice system and is supported by a strong presumption in favour of access. This was recognized by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 1-2 and 63:

[1] This Court has been resolute in recognizing that the open court principle is protected by the constitutionally-entrenched right of freedom of expression and,

² *Dempsey v. Pagefreezer Software Inc.*, 2024 NSCA 76 [Dempsey].

as such, it represents a central feature of a liberal democracy. As a general rule, the public can attend hearings and consult court files and the press — the eyes and ears of the public — is left free to inquire and comment on the workings of the courts, all of which helps make the justice system fair and accountable.

[2] Accordingly, there is a strong presumption in favour of open courts. It is understood that this allows for public scrutiny which can be the source of inconvenience and even embarrassment to those who feel that their engagement in the justice system brings intrusion into their private lives. But this discomfort is not, as a general matter, enough to overturn the strong presumption that the public can attend hearings and that court files can be consulted and reported upon by the free press.

...

[63] ... Neither the sensibilities of individuals nor the fact that openness is disadvantageous, embarrassing, or distressing to certain individuals will generally on their own warrant interference with court openness.

[14] Mr. Buxton has not asked for a confidentiality order banning publication of the trial judge's decision. Even if he had, on the record available, I would not find it appropriate to grant one. All discretionary limits on court access must meet a three-part test requiring proof of a proportionate response addressing a serious risk to an important public interest.³ Mr. Buxton's concern is with a negative public perception of him flowing from the findings made by the trial judge. A fair reading of the decision reveals it to be a typical piece of judicial writing identifying issues, reviewing evidence, making findings and applying the law. If the trial judge erred in some way, Mr. Buxton's appeal is the avenue to have those errors addressed in a similarly public way.

The Motion to Amend the Notice of Appeal

[15] On this motion, Mr. Buxton seeks to amend his notice of appeal for a second time. His first amendment did not require leave as it was completed on March 27, 2025, in compliance with *Rule* 90.39(1). Since then, well over five months have passed, the respondents have filed a notice of contention (as amended), and a motion for date and directions has taken place.

[16] Mr. Buxton now seeks to make extensive additional amendments under *Rule* 90.39(2), broadly categorized as: (a) an allegation of error in denying him public interest standing; (2) an allegation of bias; and (3) an allegation the respondents

³ *Sherman Estate v. Donovan*, 2021 SCC 25, *Fraser v. Nova Scotia Barristers' Society*, 2024 NSCA 94 at paras. 154-155, and *Dempsey* at paras. 11-12.

breached his s.15 *Charter* rights. The proposed amendments impact every paragraph of the amended notice of appeal as well as add a 15th ground of appeal. During the motion for date and directions held on June 25, 2025, Mr. Buxton gave notice of his intent to further amend his notice of appeal to include his allegation of a *Charter* breach. No other proposed amendments were raised at that time.

[17] The respondents contest the proposed amendments on the basis they are not sustainable and raise new issues not before trial court. They do not rely on any prejudice from the timing of the motion or from repeated amendments to the notice of appeal.

[18] The test to be applied to this motion is clear. As identified by Justice Derrick in *R. v. J.T.*, 2022 NSCA 21 at para. 10:

[10] It is well established that the authority to permit an amendment to a Notice of Appeal is found in *Civil Procedure Rule* 90.39(2). The governing considerations are whether (a) the amendment is reasonably necessary, and (b) the extent to which it will result in prejudice to the respondent (*Lane v. Carsen Group*, 2003 NSCA 42; *R. v. DeYoung*, 2017 NSCA 13). In *R. v. Rouse*, 2020 NSCA 28, Justice Bryson held a proposed amendment that “is not plainly unsustainable or fails to present an arguable issue” should be granted (para. 18).

See also *Nyiti v. Cape Breton University*, 2009 NSCA 54, at para. 5, *R. v. Marriott*, 2012 NSCA 76 at para. 5, and *LeBlanc v. LeBlanc*, 2023 NSCA 18.

[19] Given the respondents claim no prejudice from the proposed amendments, I am left to consider whether they are: (1) arguable on their face; and (2) reasonably necessary for the administration of justice by enabling the presentation and determination of a material issue between the parties.⁴

Public Interest Standing

[20] Mr. Buxton’s proposed amendments begin with his request to add an allegation of error in the trial judge’s decision to deny him public interest standing. His proposed new ground of appeal is as follows:

15. The Judge erred in law and created an apprehension of bias by determining that the Appellant did not have standing to request public interest status based on

⁴ *R. v. Marriott*, 2012 NSCA 76 at para. 5.

the Respondent's unsupported allegations rather than on the Appellant's submissions and the evidence.

[21] In his affidavit, Mr. Buxton indicates this ground was omitted from his notice of appeal by error. He explains the trial judge denied his request for public interest standing based “on a fact I did not plead and an argument I did not put forward”. There is no elaboration. There is no allegation the trial judge misapprehended the evidence or made a finding unsupported by the evidence. Mr. Buxton relies on unrelated litigation to support his claim that “the issue in the proceeding is of considerable interest to all Nova Scotia residents”.⁵ The case he cites does not involve public interest standing. Instead, it involves judicial review initiated by two individuals after their claims for reimbursement for the cost of out of province medical treatment were denied.

[22] The issue Mr. Buxton seeks to have addressed with his proposed amendment was raised somewhat tangentially in his statement of claim where he included a heading “Public Interest Standing” and in the underlying pleading claimed:

3. In this proceeding, the Court must determine whether the Plaintiff is, was prevented from accessing a process which enabled him entitled to receive certain health services free of charge as insured services and whether the information on the department of health and wellness website provides complete and accurate information concerning the categories of insured health services in Nova Scotia.

4. The Plaintiff is asking the Court to declare that this proceeding a matter of public interest on the grounds that every Nova Scotian has a right to know which health services he or she is entitled to receive free of charge, which services they may obtain at their own expense and whether they can rely on the information on the Department of Health and Wellness' website when making decisions that effect their health and finances.

[23] I would observe that a claim for declaratory relief and for public interest standing are separate and distinct matters. There is no evidence before me as to how this claim was advanced, the evidence offered, or the arguments made in support. Nevertheless, the trial judge addressed the point raised in the pleading by finding Mr. Buxton had a private interest in the litigation, and “this is not a case where public interest standing is required or appropriate”. He concluded Mr. Buxton's action against the respondents “is another reasonable and effective way to bring the issue before the Court”.⁶ The trial judge's use of the phrase

⁵ Mr. Buxton references the decision of Gabriel, J. in *Brady and Ellingsen v. Nova Scotia (Attorney General)*, 2024 NSSC 329.

⁶ *Buxton v. Nova Scotia (Attorney General)*, 2025 NSSC 85 at para.7 [Buxton].

“reasonable and effective” appears to reference the criteria to assess public interest standing established by the Supreme Court of Canada in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para. 37.

[24] On the question of whether Mr. Buxton’s proposed amendment on this issue should be permitted, I am not persuaded it presents an issue arguable on its face or is reasonably necessary. A review of Mr. Buxton’s statement of claim reveals he pursued three tort claims against the respondents, alleging they breached duties owed to him, and sought various heads of damages as relief. The facts supporting these claims and the relief sought were all personal in nature. They related to Mr. Buxton’s circumstances and focused on the failure to reimburse him for the costs and expenses of the surgery he obtained in Ontario. The lone exception was his claim against the Department of Health and Wellness for punitive damages which he pled resulted from the fact its website contained misleading information. On this claim, Mr. Buxton invoked the harm caused to a large number of Nova Scotians by the misleading information. But the remedy of punitive damages remained a private remedy.

[25] Mr. Buxton was permitted to proceed with his claims on the basis of his private interest and there is no allegation this status in any way restricted the litigation of the causes of action set out in his statement of claim. I am not persuaded on the record available there exists any basis to permit public interest standing, let alone a sustainable argument that the trial judge erred in denying it. As a result, I decline to allow this proposed amendment.

Apprehension of Bias

[26] The second proposed amendment category relates to an allegation of bias. Mr. Buxton says that the trial judge’s bias “dominated every aspect of the trial” and was displayed in the way he framed the issues to favour the respondents and failed to answer the questions posed. Mr. Buxton explains in his affidavit that he failed to include this allegation in his original notice of appeal as a result of “confusion”, which I take to mean misunderstanding the instruction sheet provided to self-represented litigants. The Respondent is not opposed to including this allegation as a stand-alone ground of appeal but argues it is plainly unsustainable as presented by Mr. Buxton.

[27] In view of the evidence and available record, I find the allegation of bias to be arguable and reasonably necessary. I do have concern with how Mr. Buxton proposes to imbed his allegation of bias into his existing notice of appeal. The *Rules* require a notice of appeal to include concise statements of the grounds (*Rule* 90.06(1)). For this reason, I would deem Mr. Buxton's notice of appeal to contain an additional ground of appeal as follows: Did the trial judge conduct the proceeding in such a way as to give rise to a reasonable apprehension of bias?

[28] Mr. Buxton shall be permitted to argue the particulars of this ground of appeal in his factum.

Section 15 Charter breach

[29] The final category of proposed amendments relates to Mr. Buxton's claim that his *Charter* rights were breached by both the respondents and the trial judge. In his affidavit, Mr. Buxton admits he did not raise any *Charter* issue in his statement of claim. Instead, he argues the questions posed to the trial judge implicitly required a ruling on whether there had been a breach of his s. 15 *Charter* rights. He contends this happened in "a number of instances" and points to the judge's alleged refusal to comply with ss. 17-18 and s. 24 of the *Canada Evidence Act* and s. 44 of the *Freedom of Information and Protection of Privacy Act*. Mr. Buxton does not provide any extracts from the record to support the instances of which he complains. Nor does he explain how the judge's rulings form the basis for *Charter* relief of some kind.

[30] In those instances where Mr. Buxton wishes to allege the trial judge's rulings breached his *Charter* rights, I would find those allegations plainly unsustainable and refuse the proposed amendments. With respect to the remaining allegations in this category, Mr. Buxton raises them for the first time on appeal. The considerations that apply in these circumstances were reviewed by Justice Farrar in *R. v. DeYoung*, 2017 NSCA 13:

[21] In *R. v. Reid*, 2016 ONCA 524, the Ontario Court of Appeal set out the governing principles that determine whether an appellate court will entertain an appeal on an argument not raised at trial. Watt, J.A., writing for the Court, held that the general rule is that courts of appeal will not permit an issue to be raised for the first time on appeal (¶39). The general rule also applies to constitutional issues (¶41). He detailed what must be shown by a party who seeks to raise issues, including constitutional issues, for the first time on appeal:

43 A party who seeks to escape the grip of the general prohibition against raising issues for the first time on appeal must meet or satisfy three preconditions:

- i. the evidentiary record must be sufficient to permit the appellate court to fully, effectively and fairly determine the issue raised on appeal;
- ii. the failure to raise the issue at trial must not be due to tactical reasons; and
- iii. the court must be satisfied that no miscarriage of justice will result from the refusal to raise the new issue on appeal.

See *Brown*, at p. 927, per L'Heureux-Dubé J. (dissenting).

44 A final point. The decision whether to grant or refuse leave to permit a new argument is a discretionary decision informed by a balancing of the interests of justice as they affect all parties: *Kaiman*, at para. 18.

[22] The appellant has not satisfied me that the evidentiary record is sufficient to permit this Court to fully, effectively and fairly determine this issue raised for the first time on appeal.

[31] Mr. Buxton has simply not provided any basis on which I could be satisfied that it is appropriate to consider his proposed *Charter* claims for the first time on appeal.

Conclusion

[32] In conclusion, the stay motion is dismissed and the motion to amend is granted in part. On the permitted amendments, aside from the lone permitted amendment, Mr. Buxton's motion to amend is dismissed.

[33] The respondents sought costs on both motions and were substantially successful. Mr. Buxton shall pay costs in the amount of \$500.00.

Gogan, J.A.