

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *Halifax (Regional Municipality) v Wells*, 2024 NSPC 38

Date: 20240627

Docket: 8543372

Registry: Halifax

Between:

Halifax Regional Municipality

v

Janice Marie Wells

***DECISION REGARDING APPLICATION FOR PARTICULARS AND
APPLICATION TO QUASH***

Judge: The Honourable Judge Del W Atwood

Heard: 2024: 27 June in Halifax, Nova Scotia

Charge: Paragraph 71(1)(b) of the *Health Protection Act*

Representation: Brian Cox for the Nova Scotia Public Prosecution Service
Janice Marie Wells, unrepresented

By the Court:*Synopsis*

[1] The Court is dealing with an application for particulars and an application to quash a charge.

[2] Janice Marie Wells is charged in a summary-offence ticket [SOT] (SOT 7455940, case 8543372) alleging an offence under the *Health Protection Act*, SNS 2004, c 4 [HPA]. The SOT refers to ¶ 71(1)(b) of the *HPA*, which is the penalty provision of the statute, rather than an offence-description provision. The SOT provides the following description of the alleged offence:

On or about the 27th day of November 2021, at or near 747 Bell Blvd Goff NS did unlawfully commit the offence of: person [sic] failing to comply with Part I of act or regulations or with order made under part of act (Refusing to complete form made under Health Protection Act).

[3] The endorsements on the SOT record the following pertinent transactions:

Date	Outcome
27 November 2021	Cst Zach Withrow serves the summons portion of the SOT on Ms Wells.
24 October 2022	Arraignment; Ms Wells pleads not guilty via her husband who appears as her agent; the presiding justice of the peace [PJP] adjourns the trial to 28 Feb 2023.

28 Feb 2023	The trial is concluded; the PJP makes a finding of guilt and imposes a sentence.
10 Aug 2023	A summary-conviction appeal is allowed; Ms Wells' conviction is set aside and a new trial is ordered.
5 Sep 2023	Ms Wells appears in Provincial Court; the presiding judge adjourns the case to 29 Jan 2024 for trial scheduling.
29 Jan 2024	Ms Wells' case is called before a PJP; the PJP directs Ms Wells to file her written argument regarding particulars by 30 April 2024; any reply from the prosecution is to be filed by 30 May 2024; the court is to hear Ms Wells' application for particulars on 27 June 2024 6:00 pm.
30 Apr 2024	The Court receives Ms Wells' written "Demand for Particulars" .

[4] The Court received an email from the prosecutor dated 19 June 2024 informing the Court that the prosecutor would oppose Ms Wells' demand for particulars, and that the prosecutor had sent particulars to Ms Wells by email on 3 June 2024.

Charge-wording sufficiency

[5] A charge must be worded in a way that allows an accused person to know what the state alleges was done that was wrong. Charge-drafting standards are not exacting; they are set out in § 581(3) of the *Criminal Code* (provisions of the *Code* which apply to summary-conviction matters are brought into this proceeding in

virtue of § 7 of the *Summary Proceedings Act*, RSNS 1989, c 450). Even a charge that is encumbered by some level of insufficiency may nevertheless be found legally acceptable, provided the wording give the accused person fair notice of the case to be met: *R v Webster*, 1993 CanLII 9437, [1993] 1 SCR 3 at 8-9.

Particulars and their purpose

[6] An accused person who is confronted with a charge that exhibits a level of insufficiency or uncertainty may seek a number of remedies. One of them is an application for an order for particulars under § 587 of the *Code*. An application for particulars is heard as a pre-trial application, in virtue of ¶ 2.4(2)(c) of the *Nova Scotia Provincial Court Rules*: online at <https://qweri.lexum.com/w/nsc/pcr-en#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA>.

[7] The function of particulars in a trial is twofold: first, to give exact and reasonable information to an accused person respecting the charge as will enable the establishing of a defence; second, to facilitate the administration of justice (*eg*, allowing the trial judge to assess the relevancy of evidence): *R v Canadian General Electric Co Ltd, Westinghouse Canada Ltd and GTE Sylvania Canada Ltd (No. 1)*, 1974 CanLII 1540, 17 CCC 2d 433 at 447 (ONSC).

The need for particulars in this case

[8] In Ms Wells' case, the need for particulars is quite evident. The first clause of the charge, as worded in the ticket, is manifestly vague: failing to comply with Part I of the *HPA*, or the regulations, or an order made under the *HPA*.

[9] Part I of the *HPA* runs from § 4 to § 74 of the statute; it is possible to comprehend scores of ways one might fail to comply with those provisions: a medical officer might fail to perform an obligatory duty; a medical-records custodian might fail to disclose a record sought by a medical officer; a designated person might fail to report a health hazard; an occupier of premises might fail to comply with a medical-officer's order. I stopped counting at twenty ways one could be in violation of Part I of the *HPA*.

[10] What about failing to comply with regulations under the *HPA*? As of the date Ms Wells was charged, there were 12 regulations made under the authority of the *HPA*, each of which might be violated in any number of ways.

[11] I have not gone through the Royal Gazette to count the number of *HPA* orders there were in operation at the time Ms Wells was charged.

[12] Accordingly, it would be an understatement to describe the first clause of the charge as imprecise. A similarly imprecise SOT— in *R v Haley*, 1981 CanLII

3230, 65 CCC 2d 93 at 100 (NSCA)—was found to be objectionable as being multifarious, but could be fixed with an amendment.

Particulars provided

[13] Fortunately, the officer who issued the ticket to Ms Wells wrote on the SOT an additional detail: “refusing to complete form under the *Health Protection Act*.”

That supplementary specificity narrows down considerably the scope of the alleged offending conduct.

[14] The prosecution has provided Ms Wells with added granularity; in the email which the prosecutor sent to Ms Wells on 3 June 2024 and copied to the Court on 19 June 2024, the prosecutor stated:

Notwithstanding that you have not relied upon any legal basis to support your "Demand For Particulars", and without conceding any merit to your expressed position, the Crown is prepared to supply the following details with respect to the charge outstanding. The particulars of the offence alleged are that you did:

unlawfully fail to complete a Nova Scotia Safe Check-in form, contrary to ss. 2.2 of the Restated Order #3 of the Chief Medical Officer of Health made pursuant to Section 32 of the *Health Protection Act*.

[15] I am satisfied that this particularization of the charge provides Ms Wells with sufficient detail to allow her to establish her defence, and to allow the Court to identify relevant issues. Indeed, it is apparent from the very first paragraph of Ms Wells’ particulars document that she is well fixed with the knowledge of the precise theory of the case for the prosecution:

Janice Wells was issued a travel mandate ticket [sic] at Halifax Airport by HRPD police on Nov 27, 2021 for allegedly refusing **to Fill out the Tracking Travelers to Nova Scotia form** [sic]. . . .

Ms Wells' Demand for Particulars document

[16] Ms Wells' demand for particulars is looking for very much more than what the prosecutor has given her. For the purposes of clarity, Ms Wells' demand document is attached to this decision as Schedule A.

[17] In my view, what Ms Wells seeks is more in the nature of legislative and social facts, as that term was defined in *Danson v Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 SCR 1086 at 1099: legislative facts are those that establish the purpose and background of legislation, including its social, economic and cultural context. This falls well outside the scope of what would constitute particulars. Furthermore, legislative facts do not appear to be relevant to this case, as no constitutional question is before the Court. Even if a constitutional issue were to arise, that development would not enlarge the obligation of the prosecution to provide disclosure or additional particulars, as constitutional challenges regarding the validity of statutes or regulations are subject to a defence burden of proof; this is because statutes and regulations are presumed to be valid: *Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64 at ¶ 25; *Reference re Impact Assessment Act*, 2023 SCC 23 at ¶ 69-75.

[18] An application for particulars is not an alternative procedure for obtaining disclosure or production of evidence; it does not require the prosecution to provide details about matters not germane to the trial of a case. Given the wording of some of Ms Wells' demands, it is important for the Court to observe as well that an application for particulars does not require the prosecution to offer legal advice. If Ms Wells wishes to obtain legal advice, she is fully at liberty to consult counsel of her choice.

[19] Of the very many issues raised in Ms Wells demand document, only two will be germane at her trial:

- Was she required by law to complete a safe check-in form?
- Did she intentionally fail to complete one?

[20] In grappling with these issues at trial, the Court will assiduously observe the presumption of Ms Wells' innocence, the proof-beyond-a-reasonable-doubt standard borne by the prosecution, and the need to consider all statutory and common-law defences available to Ms Wells based on the evidence.

[21] I find that the prosecution has already provided sufficient particulars to Ms Wells. Accordingly, the application for particulars is dismissed.

[22] Although the prosecution provided this particular to Ms Wells without the Court having to order it, I believe that the Court ought still direct (1) that the particular be entered on the record (which is carried into effect by the publishing of this decision), and (2) that the trial proceed in all respects as if the SOT had been amended to conform with the particular. This complies with § 587(3) of the *Code*, which sets out the procedural effect of particulars once they have been provided; it seems to me immaterial whether the particulars were provided by court order, or, as in this case, provided voluntarily by the prosecution.

Application to quash the SOT

[23] Ms Wells observes accurately that the prosecution did not meet the 30 May 2024 deadline set by PJP for the filing of a response to the application for particulars. The remedy Ms Wells seeks is to have the SOT quashed.

While filing deadlines must be treated seriously by all parties—as filing requirements are orders of the court, not merely requests or invitations—Ms Wells has not suffered a prejudice. In fact, she has been provided with ample particulars by the prosecutor without the Court having had to order it. A charge should be quashed or stayed only in the clearest of cases. This is not one of them. The application to quash is dismissed.

Atwood, JPC

APPENDIX A

2024

Hfx No. 8543372

Provincial Court of Nova Scotia

Between:

Janice Wells

Applicant

and

His Majesty the King

Respondent

Demand for Particulars

History

- Janice Wells was issued a travel mandate ticket at Halifax Airport by HRPD police on **Nov 27, 2021** for allegedly refusing to **Fill out the Tracking Travelers to Nova Scotia form and was convicted on February 28, 2023.**
- Filed for Appeal in **March 2023** and where her appeal was **UPHELD** based solely on her transcript from her trial in provincial court agreeing that the grounds from which the appeal was based; refusal to give leeway to self representatives, reasonable apprehension of bias in the form of errors in the application of law, was not made aware of her rights and was denied her right to privacy.
- Justice Campbell issued a **court order for the matter to be sent back to Provincial court** that was used to get a hearing for particulars.
- Submitted a **pre-trial application For Particulars on January 9, 2024** but it went unanswered until the scheduled trial date on **January 29th 2024.**
- On **January 29, 2024** the Crown Attorney proposed a deal between a hearing for particulars or a plea of guilty with a reduced fine (**\$134 from \$2422.50**).
- **She requested the Motion hearing for Particulars which is set for June 27, 2024**
- This submission contains the perfected particulars pertaining to the following: The legislative intent of the **Health Protection Act** and its application, comprehending the ticket and the charge as well as the **Tracking Travelers to Nova Scotia form.**

Janice Wells, representing herself observes;

WHEREAS the last appearance in the provincial court was deemed unfair in appeal to the Supreme Court of Nova Scotia,

WHEREAS the rules for defense have not been made clear for self- represented individuals,

WHEREAS Janice Wells is in possession of a court order from Justice Cambell of the Supreme Court for retrial in a context outlined in *Rule 1.1 (1) Fundamental Objective: The fundamental objective of these Rules is to ensure that cases in the Provincial Court of Nova Scotia are dealt with fairly, reasonably and efficiently,*

WHEREAS The *Health Protection Act (HPA)* discusses reasonableness of the restrictions (PHO) shall be no greater than are reasonably required considering all of the circumstances.

WHEREAS the *HPA* discusses the reasonable limit of rights allows the inquiry of rights as a value that must be considered,

WHEREAS the Burden of Proof is on the crown to prove the PHO applied to Janice Wells,

To be clear: there is no intention to submit a Constitutional challenge: but in preparation for arguments for trial where this charge is heard in statutory court, rights can be discussed because the statute involved discusses the topic of rights.

therefore demands from the His Majesty the King in Right of the Province of Nova Scotia a further and better statement of the Crown's claim(s), as follows:

PART I HEALTH PROTECTION ACT, REGULATIONS, PHO, PERSONAL HEALTH INFORMATION ACT and GUIDE TO HEALTH PROTECTION ACT AND REGULATIONS

1. Under s.2 of the *Health Protection Act (HPA)*, what specific criteria was used to determine the PHO was reasonable and not restrictive?

2. Many sections of the *HPA* and the Guide to Health Protection Act and Regulations mention orders being issued to "a person" "the person", "any person" or "class of persons". These phrases are mentioned 174 times. If the legislation demonstrates that orders are to be issued to individuals please demonstrate how and by what legal mechanism any PHO could be issued, as it was done, to all residents of Nova Scotia?

3. Concerning the *Personal Health Information Act (PHIA)*, which section of the *HPA* legislatively sanctions the ability to demand any person's private medical information by non custodians?

4. Which section of the *HPA* or *PHO* expressly sanctions the collection of private medical information, in particular, vaccination status and prevails over the *PHIA*?

5. Under s.2.1 of the *PHO* November 17, 2021 states a 'peace officer' has powers to deny any person entry to Nova Scotia authorized by s. 46 of the *HPA*, however the stated section refers only to a 'medical officer'. Please clarify the discrepancy.

6. The written *PHO* states in PART II ENTRY, ISOLATION AND QUARANTINE REQUIREMENTS page 5

s.2 Effective 8:00 a.m. November 17, 2021 all persons are prohibited from entering Nova Scotia, except as stated herein or set out elsewhere In this Order. however the court uses the date when the order was published in the Royal Gazette Part I. Which is the legally correct effective date?

7. What is the definition of the word 'requirement' used in the written *PHO* dated November 17th, 2021?

8. What qualifications/standards/designation does the *PHIA* require to be able to be a custodian or an agent of a custodian of personal health information?

9. Under *PHIA* according to the definition of a custodian included among others; any other individual or organization or class of individual or class of organization prescribed by regulation as a custodian. What prescribed regulation designated the compliance officer to be a custodian of an individual's personal health information?

10. Was the Compliance Officer acting as an agent of a custodian?

11. What were the protocols outlined for the chain of custody for the handling of my personal, private health information in all the options given to travelers?

12. Under the Confidentiality Regulations made under Sections 74 and 106 of the Health Protection Act:

Security of Information 3 Personal information or business information that is accessed by a medical officer under Section 15 or 16 of the Act or the regulations or is otherwise received by a medical officer must be kept in a secure location that is accessible only by a medical officer or staff authorized by a medical officer, was the Compliance Officer deemed as an authorized staff by an OIC and what was that OIC#?

13. Did the Compliance Officer have power of detainment?

14. Under s.9 and 14 in the HPA, where does it state that the CMOH has legislative powers?

15. It appears that "orders" to individual people who show signs of illness that could potentially be a communicable disease can be issued; however, where is the statutory provision to create laws which are applicable to everyone regardless of health status? .

16. Additionally, where is the legal obligation stated for individuals to self declare, self isolate when traveling?

17. "Tracking Travelers to Nova Scotia" form issued at Halifax Stanfield International Airport was Revised in September 2021. Please explain the nature of and reason for the revision and was it published in the Royal Gazette Part II?

18. What section of the HPA provides the legal authority to override my mobility rights, a federally guaranteed right and restrict my movement within Canada?

19. Concerning the constitution and jurisdiction of the provincial orders authorized under section 32 of the HPA, the PHO never explicitly stated it was operating under s.33 of the Charter.

Exception where express declaration 33 (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter. and

(1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right: to move to and take up residence in any province; and to pursue the gaining of a livelihood in any province.

Which section or declaration was made that effectively overturned the rule of law in Canada?

20. A news release by the Nova Scotia government dated May 13, 2021 titled New Travel Application Process <https://news.novascotia.ca/en/2021/05/13/new-travel-application-process> Indicates there was an application process for approval in order to travel. Where were the public supposed to access this process as it is not indicated on the news release?

21. Why, when I booked my airline ticket, was there no application for approval to travel?

22. Notice constitutes, per Justice Fichaud, "appnsing that person at the scene, when the offender actually is informed of the Order and give an opportunity to comply before suffering a sanction. This safeguard cannot be circumvented by a deemed constructive notice ..." Notice to unspecified recipients in the written form was and is not legal notice that the PHO applied to me nor did this take place at the Halifax International Airport. No order was issued to me in my name. Where was the notice I was supposed to be given of this requirement?

23. Where should I have received my notification of the changes to the orders? If those that are obligated to enforce these orders are unfamiliar with the procedure to be followed, what clause or section of the HPA Regulations or PHO outlines my responsibility to ensure they follow their procedures?

24. Where is the provision in the HPA or its regulations to publish the PHO authorized by the CMOH in the Royal Gazette Part I?

25. What was the procedure that was used by the Nova Scotia Public Health Agency when publishing the PHO in the Royal Gazette Part I?

26. What is the definition of the word "order" used in the written PHO dated November 17th, 2021?

27. Where does it reside in the hierarchy of legislation?

28. According to s. 38 where the judicial order has the ability to ensure compliance of the original order by a medical officer made under s.32, which kind of order, medical or judicial, has more force in law?

29. Where was the official source for the PHOs made available for the public to inform themselves?

30. S.53(2)(a) says the CMOH may establish a VOLUNTARY immunization program. How then can an individual be charged with failure to disclose personal, private health information relating to a VOLUNTARY measure?

31. Does the Crown assert that the conditions under which travel within Canada were prescribed were voluntary?

PART II TICKET

1. This Schedule 49 to the Summary Offence Tickets Regulations, N.S. Reg. 281/2011 outlines the charge for "failing to comply" is 71 (1):

Part I—Diseases and Health Hazards

1	<i>Individual failing to comply with Part I of Act or regulations or with order made under Part I of Act (specify)</i>	71
	<i>first offence</i>	\$2422.50
	<i>second or subsequent offence</i>	\$11 622.50

However, listed on the ticket indicated 71 (1) (b) of the Health Protection Act as the source for the charge. Which section of the HPA, the Regulations or the PHO indicates which stated legislation prevails?

2. Concerning the summary offense ticket, in question cites the offense as 'failure to comply with Part 1 of act or regulations or with order made under part of act (refusing to complete form under Health Protection Act). Which section in Part 1 of the HPA does it outline any requirement to fill out a form?

3. Which section of the HPA, the Regulations or the PHO where it specifies the offense under 71(1)(b) Janice is alleged to have committed?

4. Which is the appropriate charge for the information that was laid against Janice Wells?

PART III TRACKING TRAVELERS TO NOVA SCOTIA SAFE CHECK-IN FORM

1. What is/are the OIC #(s) prescribing the Tracking Travelers to Nova Scotia form?

2. What are the OIC #s explaining the forms for issuing an order under section 32?

3. Was the form Tracking Travelers to Nova Scotia issued in the Royal Gazette Part II?

4. The first sentence of the form states: "People traveling from outside Nova Scotia, PEI, and Newfoundland and Labrador may need to self-isolate upon arrival in Nova Scotia based on vaccination status and testing." Janice Wells tested negative when leaving Yukon. Why was this fact ignored upon her arrival in Nova Scotia?

5. Tracking Travelers to Nova Scotia form indicates that the collection and use of information is authorized by sections 8, 15 and 50 of the HPA. Please provide where in these sections the CMOH has authority to demand personal, private health information given that S.2 of PHIA speaks of the right of the individual to protect their personal health information and S.7(1) indicates privacy of personal health information is paramount and the purpose of the Act itself?

6. The definition of the word "isolation" in the HPA s.4(j) must have a communicable disease or is infected with an agent of a communicable disease to remain separate from others. Which prevails: the definition in the act or the PHO?

7. Concerning the Tracking Travelers to Nova Scotia form states, "to enter Nova Scotia All travelers coming from other Canadian provinces and territories must complete this form so that provincial government officials can confirm you are following the law" What law is being referenced?

8. There are two terms used to describe the form that Janice Wells is alleged to have refused to complete. The heading on the form is Tracking Travelers to Nova Scotia yet when exempting those travelers from NS, PEI and NFLD and Labrador who had not traveled outside those provinces in the last 14 days the form is referred to as Nova Scotia Safe Check- In form. What is the explanation for this discrepancy and confirm which term is legally correct?

9. If Nova Scotia Safe Check- In form is legally correct, what are the DIC's that gave legal status to the form?

10. Tracking Travelers to Nova Scotia form indicates there was a fact sheet available from border staff. Which parts of the government's procedure were legally required but not followed?

11. What information was on this fact sheet?

12. Are you able to provide this fact sheet?

Signature

Signed on April 30, 2024.



Janice Wells