

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Nova Scotia (Public Safety) v. Canada Mortgage and Housing Corporation, 2009 NSSC 391

**Date:** 20090625

**Docket:** Hfx No. 312119

**Registry:** Halifax

**Between:**

The Director of Public Safety

Applicant

v.

Canada Mortgage and Housing Corporation  
and Lisa Lawrence

Respondents

**Judge:** The Honourable Justice C. Richard Coughlan

**Heard:** June 24, 2009 (in Chambers), in Halifax, Nova Scotia

**Decision:** June 25, 2009 (Orally)

**Written Release  
of Decision:** December 16, 2009

**Counsel:** Richard G. Arab, for the applicant  
Jennifer L. Cox, for the respondent, Lisa Lawrence

**Coughlan, J.:** (Orally)

[1] The Director of Public Safety applies for a community safety order pursuant to the *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6 in relation to property situate at 134 Lavender Walk, Spryfield, Nova Scotia.

[2] Various definitions are set out in the *Act*, including:

2 (1) In this Act,

(a) “building” means

(i) a structure of any kind or a part of a structure, including an apartment, suite, life lease rental unit, co-operative housing unit or condominium unit, and

(ii) a mobile home;

....

(h) “property” means

(i) a building and the land on which it is located, and

(ii) land on which no building is located;

....

(i) “specified use”, in relation to property, means use of the property

....

(ii) for the possession, use, consumption, sale, transfer or exchange of a controlled substance, as defined in the *Controlled Drugs and Substances Act* (Canada), in contravention of that Act,

....

(2) For the purpose of this Act, a community or neighbourhood is adversely affected by activities if the activities

(a) negatively affect the health, safety or security of one or more persons in the community or neighbourhood; or

(b) interfere with the peaceful enjoyment of one or more properties in the community or neighbourhood, whether the property is privately or publicly owned.

[3] Section 5 of the *Act* provides:

5 The Director may apply to the Court for a community safety order if the Director has received a complaint.

[4] The evidence consists of a number of affidavits filed by the Director of Public Safety, as well as Lisa Lawrence and oral evidence of Keltie Jones, D'Arcy Hueston, Patricia Kennedy and Lisa Lawrence. Keltie Jones' affidavit of May 29, 2009 contains observations made by a number of unnamed complainants concerning the property at 134 Lavender Walk.

[5] The burden is on the Director of Public Safety to prove on a balance of probabilities the facts necessary to justify the order sought. The *Act* provides a complaint may be made to the Director and, upon receiving a complaint, the Director may, among other things, investigate the complaint. The Director may apply to the Court for a community safety order. Section 33 of the *Act* provides no evidence may be given by which a complainant may be identified. Therefore, the respondent has no opportunity to cross-examine or test the evidence of the complainant. The complainants could be persons who have a grudge against the respondent. One does not know, the evidence is untested. Quite appropriately, the complaint is information which allows the Director to investigate the situation and determine if it is a proper case for seeking a community safety order. I am not prepared to consider, and do not consider, the anonymous complaints as evidence upon which this Court may grant an order.

[6] Lisa Lawrence denied the property is used for the sale of a controlled substance. She stated she uses marihuana for medicinal purposes, although her doctor has not given her a prescription for marihuana. She buys drugs illegally -

about five grams at a time - and uses approximately ten to fifteen grams of marihuana a week. She testified her sons, Brandon and Marcel, have their own marihuana. She smokes the marihuana in her bedroom or on the back door step. She says she has no control over her sons. Nobody in her household traffics in drugs. She said there was no reason for members of the community to be afraid of her. The people in the community know her children respect them. She considers the police target her children.

[7] From the evidence of Keltie Jones, D'Arcy Hueston and Patricia Kennedy, I find the following facts have been established:

[8] From the evidence of Constable Patricia Kennedy, who is a Community Response Officer with the Halifax Regional Police for the Greystone area, 134 Lavender Walk takes up a majority of the calls for service in the Greystone community. There are consistent daily patrols in the area of the property. She has conducted surveillance on 134 Lavender Walk. People are coming and going at all hours of the day and night, staying only a short amount of time. Brandon and Marcel Lawrence, and their core friends, identify themselves as GS or GSG, which stands for Greystone Gang. She observed large groups of youth and adults in the home. There is always a smell of marihuana coming from the residence. Lisa Lawrence admitted to Constable Kennedy that she, Lisa Lawrence, is aware Brandon and Marcel use and deal drugs from the house. Lisa Lawrence and her boyfriend, Leroy Clyde, are uncooperative with the police.

[9] From the evidence of Constable D'Arcy Hueston, a member of the Halifax Regional Police, who from June, 2005 to August, 2008, worked as a Patrol Officer in the Spryfield area and is now the Community Response Officer in the Greystone area, he has been at 134 Lavender Walk countless times for calls in response to 911 calls. He had extensive dealings with the Lawrence family. He had almost daily encounters with Brandon and Marcel Lawrence in his patrols of the Greystone area. There was a high number of people coming and going from the Lawrence residence. The night traffic was almost triple from the daytime. He has had countless calls to 134 Lavender Walk. There is a strong odour of marihuana at 134 Lavender Walk. He has observed close association with various addresses in the area, including 6 Cobalt Walk, 48 Lemon Walk and 142 Greystone Drive. Brandon and Marcel have been involved with firearms since February of 2008. Lisa Lawrence reported Brandon causing property damage. Leroy Clyde has been observed at 134 Lavender Walk at all hours of the day.

[10] From the evidence of Mr. Keltie Jones, a Peace Officer employed by the Director of Public Safety, there was video surveillance conducted from April 16 to April 21, 2009. There were continuous people and vehicles going to 134 Lavender Walk. The video starts at noon and continues to 2:00 or 3:00 the following morning of each day. He observed from the video one or more drug transactions - one involved a person coming out of the residence carrying a small plastic baggy approximately a third full. It is his belief that the property was being used to traffic illegal drugs.

[11] Based on the evidence, I am satisfied activities have been occurring on or near the property at 134 Lavender Walk, Spryfield, Halifax Regional Municipality, Nova Scotia which give rise to a reasonable inference it has been habitually used for the possession, use, consumption, sale, transfer or exchange of a controlled substance as defined in the *Controlled Drugs and Substances Act (Canada)* in contravention of that *Act*, and the community or neighbourhood is adversely affected by that activity.

[12] I am prepared to make a community safety order in respect to the property at 134 Lavender Walk, Spryfield, Halifax Regional Municipality, Nova Scotia which is to provide that a community safety order be made pursuant to the *Safer Communities and Neighbourhoods Act* in relation to 134 Lavender Walk, Spryfield, Nova Scotia (the property) in respect of the possession, use, consumption, sale, transfer or exchange of a controlled substance as defined in the *Controlled Drugs and Substances Act (Canada)* in contravention of that *Act*.

[13] That all persons are enjoined from causing, contributing to, permitting or acquiescing in the activities beginning on the day after the person is served with this order and continuing until the order ceases to be in effect.

[14] That the respondent shall do everything reasonably possible to prevent the activities from continuing or reoccurring.

[15] That the day on which the order ceases to be in effect is June 25, 2010.

[16] That the following persons shall vacate the property immediately on the posting of this order at the property and be enjoined from re-entering or re-occupying the property for a period of ninety days:

- a) Lisa Lawrence
- b) Brandon Lawrence
- c) Marcel Lawrence
- d) Santana Lawrence
- e) William Leroy Clyde
- f) Christina Cosgrove.

[17] The tenancy agreement at the property is terminated effective immediately.

[18] The Director of Public Safety shall close the property for use and occupation at 12:00 noon the day after issuance of this order and keep it closed for up to ninety days.

[19] The Director of Public Safety shall as soon as possible serve a copy of this order on the respondents by personal service.

[20] The Director of Public Safety shall post a copy of this order in a conspicuous place on the property.

[21] The Director is also seeking an order prohibiting named individuals from entering a defined area. The question arises whether such an order is authorized by the *Act*. The *Act* deals with property as defined in the *Act*, that is, a building and land on which it is situated or land on which no building is located. The order a court may make is set out in s. 7(2) and (3) and s. 8 of the *Act* which provide:

**7 (2)** Subject to subsection (3), the Court may include in a community safety order

- (a) a provision requiring any or all persons to vacate the property on or before a date specified by the Court, and enjoining any or all of them from re-entering or re-occupying it;

(b) a provision terminating the tenancy agreement or lease of any tenant of the property on the date specified under clause (a);

(c) a provision requiring the Director to close the property from use and occupation on a specified date and keep it closed for up to ninety days; and

(d) any other provision that it considers necessary to make the order effective including, but not limited to, an order of possession in favour of the respondent.

**(3)** A community safety order must contain

(a) a provision describing the property and the activities in respect of which the order is made;

(b) a provision enjoining all persons from causing, contributing to, permitting or acquiescing in the activities, beginning on the day after the person is served with the order and continuing until the order ceases to be in effect;

(c) a provision requiring the respondent to do everything reasonably possible to prevent the activities from continuing or reoccurring, including anything specifically ordered by the court under clause (2)(d)); and

(d) a provision fixing the date on which the order ceases to be in effect.

....

**(8)** **(1)** Where the Court is satisfied that the activities about which an application is made are a serious and immediate threat to the safety and security of one or more occupants of the property or persons in the community or neighbourhood, the Court may make a community safety order

(a) requiring the Director to close the property immediately and keep it closed for up to ninety days; and

(b) containing any other provision that the Court considers necessary to counter the threat or fairly give effect to its order under clause (a), including, but not limited to,

(i) a provision requiring any or all persons to vacate the property on or before a date specified by the Court and enjoining any or all of them from re-entering or re-occupying it;

(ii) a provision terminating the tenancy agreement or lease of any tenant of the property on the date specified under subclause (i).

(2) A community safety order made under subsection (1) must contain all of the provisions required by subsection 7(3).

[22] The Director submits s. 7(2)(d) of the *Act* permits the requested provision. Section 7(2)(d), in dealing with any other provision necessary, sets out as an example an order of possession in favour of the respondent, which is a provision dealing with the property. No where in the *Act* does it mention restricting access to a geographical area - but just the property. It appears s. 7(2)(d) authorizes the Court to include a provision necessary to make the order effective to deal with enforcing the order concerning the property. There is nothing in the *Act* which indicates it is to deal with restricting access of individuals to geographical areas rather than properties. If the Legislature intended such a broad power, there would have been appropriate provisions in the *Act*.

[23] In *Director of Public Safety v. Cochrane* (2008), 263 N.S.R. (2d) 159 Warner, J. dealt with the purpose of the *Act* and stated at p. 164:

My conclusion is that, while a requisite for an order is a criminally-related activity, the pith and substance of the legislation is a *bone (sic) fide* attempt to control the use of property, that is, to control the adversely effect of certain activities on a property on neighbouring properties. This matter falls within s. 92(13) of the *Constitution Act*. In addition, the province has the constitutional authority under s. 92(15) of the *Constitution Act*, 1867, to impose punishment by fine, penalty or imprisonment for the purpose of enforcing otherwise valid provincial laws.



and at paras. 31 and 32:

In contrast, I am satisfied that the purpose of this legislation is to regulate the use of property so as to suppress uses that adversely affect the property of others or interferes with others' enjoyment of their property, and that its most important characteristic or dominant feature is not to supplement the criminal law.

I note that any penalties arise only from breach of an Order; that is, the penal aspect of the legislation is solely for the purpose of enforcing the purpose of the legislation which is to regulate specified uses of property. I am satisfied that it is a proper exercise of provisional jurisdiction under Sections 92(13) and 92(15) of the *Constitution Act* of 1867.

[24] In *Saskatchewan(Director of Community Operations) v. Li*, [2007] S.J. No. 153, Currie, J. stated at para. 6:

These specified uses, if proved beyond a reasonable doubt, would constitute criminal offences under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. While it refers to criminal activities, *The Safer Communities and Neighbourhoods Act* does not purport to legislate criminal law, which is the exclusive domain of Parliament. No person is at risk of being convicted of a criminal offence under the Act. No person is at risk of being deprived of his or her liberty under the Act. An inference under the Act leads only to a disposition relating to the property, under the powers of the Province of Saskatchewan to legislate property and civil rights.

[25] I am not prepared to grant the provision restricting access to the defined area. Such a provision would not be regulating property, but rather the movement of people.

[26] After hearing counsel in this matter, I am going to award costs, but under all of the circumstances of this case, in the amount of \$750.00.

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Coughlan, J.