

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Public Safety) v. Clarke, 2009 NSSC 427

Date: 20090408

Docket: SN 309387

Registry: Sydney

Between:

The Director of Public Safety

Applicant

v.

George Walter Clarke, Mary Patricia Jessome, Jerry W. Jessome,
Sean A. Jessome and Darren J. Clarke

Respondents

Ex Parte Motion to Shorten Notice Period

**Restriction on
publication:**

Under Safer Communities and Neighbourhood Act

Judge:

The Honourable Justice Frank Edwards

Heard:

April 6, 2009, in Sydney, Nova Scotia

Counsel:

Glenn R. Anderson, Q.C., for the applicant
No one appearing for the respondents

By the Court:

[1] The Applicant, the Director of Public Safety, intends to apply to a Judge in Chambers for a Community Safety Order pursuant to the *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6, s. 5. The applicant now moves for an *ex parte* order:

1. dispensing with notice of this motion pursuant to Rule 2.03(1);
2. providing directions for the conduct of the application to a Judge in Chambers pursuant to Rule 2.03(1);
3. shortening the Chambers application filing and notice periods for the hearing at an appointed time and date provided in Rule 5.06 pursuant to Rule 2.03(1).

[2] During the hearing Counsel advised that a tentative date for the application for the Community Safety Order has been set for May 19, 2009, before Justice LeBlanc.

[3] In its brief, the Applicant states that this motion is made without notice to any other person because of the public safety interest which arises from the drug activities, their adverse affect on the neighbourhood, and from concerns that the Respondents might seek reprisal against persons in the neighbourhood and

community after being provided notice of the application for a Community Safety Order.

[4] ***The Rule governing Chambers application filing and notice periods:*** Rule 5.06 provides that a Notice of Application and the Applicant's affidavits are to be filed and served on Respondents 25 days before the date of a hearing at an appointed time and date:

(1) The applicant must notify each respondent of the application in chambers in accordance with Rule 31- Notice, no less than ten days before the day of a hearing in chambers that is regularly held or twenty-five days before the day of a hearing at an appointed time and date.

[5] ***Authority to give directions, dispense with notice and shorten notice periods:*** Rule 2.03(1) provides authority to give directions, dispense with notice and shorten notice periods:

2.03 (1) A judge has the discretion, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:

(a) give directions for the conduct of a proceeding before the trial or hearing;

(b) when sitting as the presiding judge, direct the conduct of the trial or hearing;

(c) excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party.

(2) A judge who exercises the general discretion to excuse compliance with a Rule must consider doing each of the following:

(a) order a new period in which a person must do something, if the person is excused from doing the thing within a period set by a Rule;

(b) require an excused person to do anything in substitution for compliance;

(c) order an excused person to indemnify another person for expenses that result from a failure to comply with a Rule.

(3) The general discretions do not override any of the following kinds of provisions in these Rules:

(a) a mandatory provision requiring a judge to do, or not do, something;

(b) a limitation in a permissive Rule that limits the circumstances in which a discretion may be exercised;

(c) a requirement in a Rule establishing a discretion that the judge exercising the discretion take into account stated considerations.

[6] Also relevant is Rule 22.03(1)(e) which reads as follows:

A party may make an *ex parte* motion in one of the following circumstances:

(e) there are circumstances of sufficient gravity to justify making a motion without notice, for which examples are listed in Rule 22.03(2).

[7] Rule 22.03(2)(b) reads as follows:

(2) Each of the following is an example of circumstances of sufficient gravity to justify an *ex parte* motion:

(b) notice will likely lead to violence, and an *ex parte* order will likely avoid the violence;

[8] Section 6(3) of the *Safer Communities and Neighbourhoods Act* reads:

“The Court shall hear the application on an urgent basis.”

[9] ***The intended application in Chambers:*** The Director of Public Safety intends to make an application in Chambers on May 19, 2009, for a Community Safety Order with respect to 19 MacNamara Street, Sydney Mines, Nova Scotia, (“the Property”).

[10] The Property is owned and occupied by the intended Respondents, George Walter Clarke and his wife, Mary Patricia Jessome. They live at the Property, along with their adult sons, Darren Clarke, Jerry Jessome and Sean Jessome.

[11] The intended application for a Community Safety Order will be made on the following grounds:

(a) the Property is being 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;

(b) the illegal use and trafficking of drugs on the Property negatively affect the safety and security of the neighbours and interfere with the peaceful enjoyment of their properties.

[12] The Director of Public Safety intends to file thirteen Affidavits in support of the application for a Community Safety Order.

[13] *Seeking a ten day notice period:* The Director of Public Safety seeks a shorter notice period than the 25 days set out in Rule 5.03 on the grounds of public safety, including the concern that the Respondents might seek reprisal against persons in the neighbourhood and community after being provided notice of the application for a Community Safety Order. The Director seeks an order that the notice period be shortened to 10 days.

[14] *The proposed order:* The proposed order provides for the dispensing of notice of this motion.

[15] The proposed order provides for the following shortened filing and notice periods:

3. Documents shall be filed by the following deadlines:

(a) notice of application and applicant's affidavits 10 days before the date of hearing;

(b) notice of contest 5 days after date of notification;

(c) respondents' affidavit 5 days after date of notification;

(d) rebuttal affidavit 2 days after day affidavit is delivered;

(e) notice cross-examination is required 1 day after affidavit is delivered;

(f) applicant's brief 5 days before date of hearing;

(g) respondents' brief 3 days before date of hearing;

(h) reply brief 1 day before date of hearing.

[16] The proposed order also provides that the Order be affixed to the Notice of Application in Chambers of the application for a Community Safety Order.

[17] In support of the *ex parte* application before me, the Applicant has filed the affidavit of Richard Barrett who is a Peace Officer with some 33 years experience

presently employed as an investigator for the Department of Justice. Paragraphs 3, 4, 5 and 6 of Mr. Barrett's affidavit read as follows:

"3. On behalf of the Director of Public Safety, Nova Scotia Department of Justice, I have received complaints from numerous persons living in the neighborhood and community of 19 MacNamara Street, Sydney Mines, Nova Scotia, ('the Property') concerning its use for the illegal sale and use of Controlled Drugs and Substances and the adverse impact of that activity on the neighborhood and community.

4. My investigation reveals that:

(a) The property is a single family wooden framed home in a residential neighborhood;

(b) The Property is owned by George Walter Clarke, and his wife, Mary Patricia Jessome;

(c) George Walter Clarke and Mary Jessome, live at the Property, along with their sons Darren Clarke, Jerry Jessome and Sean Jessome;

(d) George Walter Clarke was born on April 14, 1959 and is 49 years old. His criminal record includes convictions for break, enter and theft, possession of stolen property, possession of an unregistered restricted weapon, mischief to private property and possession of narcotics. His provincial convictions include having unlawfully "manufactured, transported, kept or had liquor;

(e) Mary Jessome was born on January 21, 1963 and is 46 years old;

(f) Darren Clarke was born on November 28, 1980 and is 28 years old. His criminal record includes convictions

for breach of probation, theft, failure to comply with conditions and resisting police. His provincial convictions include public intoxication;

(g) Jerry Jessome was born on May 5, 1983 and is 25 years old. His criminal record includes convictions for breach of probation, theft, failure to comply with conditions, resisting police, failing to attend court, uttering threats to cause death, possession of stolen property, mischief-property damage, being at large and possession of drugs. His provincial convictions include public intoxication;

(h) Sean Jessome was born on June 14, 1985 and is 23 years old. His criminal record includes failure to comply with conditions, uttering threats to cause death, mischief, trespassing at night, breach of probation and mischief-property damage.

5. The complaints that I received complaints from the numerous persons living in the neighborhood and community include:

(a) seeing drug transactions involving members of the Clarke family;

(b) seeing Jerry Jessome and Sean Jessome using intravenous needles to inject drugs into themselves;

(c) seeing one of the Clarke boys last winter dumping what appeared to be intravenous needles into a burn barrel; 100 of which were later retrieved by the police;

(d) seeing drug addicts and drug dealers frequent the property;

(e) persons going to and from the Property on foot at all hours of the day and night for several years;

(f) persons going to and from the Property by vehicle, only staying for short times for several years;

(g) being unable to sleep out of fear of the drug activities and associated criminal activities;

(h) being terrified to leave their doors unlocked because of the people that frequent the neighborhood on their way to or from the Property;

(I) the Clarke boys stole property, which was later found in the street containing other stolen property;

(j) threats to neighbors by persons living at the Property, including to damage homes located in the neighborhood and community;

(k) fear of violence by the persons living at the Property and others involved in the drug trade at the Property;

(l) interference with the enjoyment of their properties;

(m) fear for elderly neighbors and of the general awareness that drugs are being used and sold at the Property;

(n) concerns about disturbances on and near the Property, and thefts, break and enters and other Criminal Code offences associated with the purchase and use of drugs by persons living at the Property and persons visiting the Property;

(o) concerns about the thefts from the neighborhood perpetrated by persons living at the Property and persons visiting the Property.

6. Information from the complainants indicates that:

(a) the Property is being 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*;

(b) the illegal use and trafficking of drugs on the Property negatively affect the safety and security of the neighbors and interfere with the peaceful enjoyment of their properties;

(c) Sean Jessome, Jerry Jessome, Darren Clarke and George Walter Clarke are regular users of drugs on the Property and that Sean Jessome, Jerry Jessome, Darren Clarke are aggressive and violent when under the influence of drugs;

(d) George Walter Clarke is in the drug trafficking business with Linda LeBlanc;

(e) George Walter Clarke permits and/or assists Sean Jessome, Jerry Jessome and Darren Clarke in the commission of criminal acts to pay for their drugs;

(f) the complainants fear for their personal safety and property.

[18] **Conclusion:** After reviewing the above and hearing the submissions of Counsel, I have concluded that the application ought to be granted on the requested terms. In view of the evidence contained in Mr. Barrett's affidavit, I am satisfied that "notice will likely lead to violence, and an *ex parte* order will likely avoid the violence". Obviously, there is still a potential for violence in the short notice period but such potential is lessened by the short notice. Assuming that the tentative date of May 19 becomes a firm date, then, without my intervention, notice would have to have been given by April 7, 2009 (25 days). With the shortened 10

day notice period, notice will have to be given by May 1, 2009. That should still afford the Respondents sufficient time to prepare their response to the application. As far as the directions for deadlines is concerned, my Order will specify that these are subject to further Order of this Court. Obviously, the Judge hearing the application is free to modify any notice period or deadline contained in this decision.

[19] At the outset of the hearing, I noticed that a member of the media was present. I advised that a publication ban would be in effect otherwise the purpose of the *ex parte* motion would be defeated. I also indicated that I would hear representation regarding the ban upon request but the individual present indicated that he at least had no intention of opposing the ban.

J.