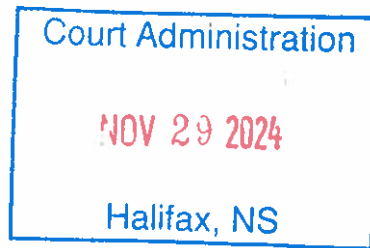


Form 5.07
2024



Hfx No.: 538783

SUPREME COURT OF NOVA SCOTIA

Between:

**CHRIS MILBURN, ARIS LAVRANOS, SHELLY HIPSON, VALERIE HENNEBERRY,
SUSAN KAISER and NOVA SCOTIA CIVIL LIBERTIES ASSOCIATION**

Applicants

and

**THE ATTORNEY GENERAL OF NOVA SCOTIA REPRESENTING
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NOVA SCOTIA**

Respondents

NOTICE OF APPLICATION IN COURT

**To: The Attorney General of Nova Scotia representing His Majesty the King in right of
the Province of Nova Scotia**

The applicants request an order against you

The applicants are applying to the court for an order declaring:

- (a) that the applicants, Dr. Chris Milburn, Dr. Aris Lavranos, Shelly Hipson, Valerie Henneberry and Susan Kaiser, have standing to commence and maintain this application, both as private litigants and as public interest litigants;
- (b) that the applicant, Nova Scotia Civil Liberties Association, has standing to commence and maintain this application as a public interest litigant;
- (c) that section 110 of the *Financial Measures (2024) Act*, SNS 2024, c. 3 (the "*FMA 2024*"), infringes sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, being Schedule B to

the *Canada Act 1982* (UK), 1982, c 11 (the “*Charter*”), and that such infringements cannot be saved by section 1;

(d) pursuant to section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the “*Constitution Act, 1982*”), that section 110 of the *FMA 2024* is of no force or effect;

(e) that clause (na) of subsection 110(1) of the *Personal Health Information Act*, SNS 2010, c. 41 (“*PHIA*”), as created by section 110 of the *FMA 2024*, infringes sections 7 and 8 of the *Charter*, and that such infringements cannot be saved by section 1;

(f) pursuant to section 52 of the *Constitution Act, 1982* that clause 110(1)(na) of the *PHIA* is of no force or effect;

(g) further, or in the alternative, that the *Electronic Health Records Regulations*, N.S. Reg. 132/2024 (the “*EHRRs*”), made pursuant to clause 110(1)(na) of the *PHIA*, infringe sections 7 and 8 of the *Charter*, and that such infringements cannot be saved by section 1 of the *Charter*;

(h) further, pursuant to section 52 of the *Constitution Act, 1982*, that the *EHRRs* are of no force or effect;

(i) that no costs of this proceeding be awarded to or against any party, regardless of the outcome; and

(j) an order, pursuant to Rule 41 of the *Civil Procedure Rules*, granting the applicants an interim and/or preliminary injunction restraining the respondent from ordering, or continuing to order, “custodians” of “personal health information” (as those terms are defined in the *PHIA*) to disclose personal health information to

the Minister of Health and Wellness (the “Minister”), as contemplated by clause 110(1)(na) of the *PHIA* and/or the *EHRRs*, until further order of the Court;

(k) such further and other relief that this Court considers appropriate.

The applicants started this application by filing this notice on the date certified by the prothonotary.

Grounds for the order

The applicants are applying for the order on the following grounds:

The Impugned Legislation and Regulations

1. On March 5, 2024, Bill No. 419 of the First Session of the 64th Assembly (“**Bill No. 419**”) was introduced in the Nova Scotia Legislature and given First Reading.

2. Bill No. 419 was ultimately passed by the Legislature and received Royal Assent on April 5, 2024, becoming known as the *FMA 2024*. The *FMA 2024* was proclaimed into force on July 2, 2024 pursuant to Order in Council 2024-272.

3. The purpose of section 110 of the *FMA 2024* was to amend subsection 110(1) of the *PHIA* by adding the following clause (na) directly after clause (n). Clause 110(1)(na) now reads as follows:

Regulations

110 (1)The Governor in Council may make regulations

[...]

(na) requiring custodians and classes of custodians to disclose personal health information to the Minister or a person acting on behalf of the Minister for the purposes of planning and management of the health care system, resource allocation and creating or maintaining electronic health record programs and services;

4. Clause 110(1)(na) of the *PHIA* now gives the Governor in Council the power to make regulations requiring custodians and classes of custodians to disclose personal health information

the Minister, without limitation and without the consent of those to whom the personal health information pertains, for three purposes: (a) planning and management of the health care system; (b) resource allocation; and (c) creating or maintaining electronic health record programs and services.

5. On July 2, 2024, the *EHRRs* were promulgated by the Governor in Council, pursuant to Order in Council 2024-273, dated July 2, 2024.

The Parties

6. Pursuant to the *Proceedings Against the Crown Act*, RSNS 1989, c. 360, the Attorney General of Nova Scotia representing His Majesty the King in right of the Province of Nova Scotia is the representative of His Majesty the King in right of the Province of Nova Scotia, and therefore the proper respondent in this proceeding.

7. The applicant, Dr. Aris Lavranos (“**Dr. Lavranos**”), is an individual who resides in Halifax, Nova Scotia. Dr. Lavranos is a physician duly licensed to practise medicine in Nova Scotia. He practises emergency medicine at the Emergency Department of the Cobequid Community Health Centre in Lower Sackville, Nova Scotia. Dr. Lavranos is also an Associate Professor with both the Department of Family Medicine and the Department of Emergency Medicine at Dalhousie University’s Faculty of Medicine.

8. The applicant, Dr. Chris Milburn (“**Dr. Milburn**”), is an individual who resides in Lutes Mountain, New Brunswick. Dr. Milburn is a physician duly licensed to practise medicine in Nova Scotia. He practises family medicine and emergency medicine at the Eastern Memorial Hospital in Canso, Nova Scotia. Dr. Milburn is also an Assistant Professor with the Department of Emergency Medicine at Dalhousie University’s Faculty of Medicine.

9. The applicant, Shelly Hipson (“**Ms. Hipson**”), is an individual who resides in Atlantic, Nova Scotia.

10. The applicant, Valerie Henneberry (“**Ms. Henneberry**”), is an individual who resides in Sambro Head, Nova Scotia.

11. The applicant, Susan Kaiser (“**Ms. Kaiser**”), is an individual who resides in Linacy, Nova Scotia.

12. Personal health information, as that term is defined in the *PHIA*, exists with respect to each of Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser.

13. Drs. Lavranos and Milburn are also both custodians of personal health information and are therefore subject to the requirements of the *PHIA* with respect to all personal health information in their custody or control.

14. Further, Drs. Lavranos and Milburn are members of the College of Physicians and Surgeons of Nova Scotia (the “**College**”). Accordingly, they are bound to adhere to the Canadian Medical Association’s *Code of Ethics and Professionalism* (the “**Code**”), pursuant to By-Law 11.1 of the *By-Laws Relating to the Activities and Operations of the College of Physicians and Surgeons of Nova Scotia*, made pursuant to the *Medical Act*, RSNS 2011, c. 38.

15. The *Code* provides that a physician’s responsibilities include:

18 Fulfill your duty of confidentiality to the patient by keeping identifiable patient information confidential; collecting, using, and disclosing only as much health information as necessary to benefit the patient; and sharing information only to benefit the patient and within the patient’s circle of care. Exceptions include situations where the informed consent of the patient has been obtained for disclosure or as provided for by law.

16. The applicant, Nova Scotia Civil Liberties Association (“**NSCLA**”), is a society incorporated pursuant to the *Societies Act*, RSNS 1989, c. 435. NSCLA was incorporated on

November 5, 2021. NSCLA is a not-for-profit organization, based in Nova Scotia and dedicated to the defence and advancement of civil liberties in Nova Scotia and Canada.

17. Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser meet the test for private interest standing in Nova Scotia, and thus have standing to commence this application.

18. Further, or in the alternative, Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry, Ms. Kaiser and NSCLA meet the test for public interest standing in Nova Scotia, and thus have standing to commence this application. There is a serious justiciable issue raised. Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry, Ms. Kaiser and NSCLA have real stakes or genuine interests in the issue. In all the circumstances, the lawsuit is a reasonable and effective way to bring the issue before the Court.

The Applicants' Claims

19. Section 7 of the *Charter* provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

20. The Supreme Court of Canada has recognized the protection of individual privacy primarily within the section 7 “liberty” interest. Such privacy interests are most notably engaged where aspects of one’s individual identity are at stake.

21. The Supreme Court of Canada has stated that “*respect for individual privacy is an essential component of what it means to be free*”, and that “*the infringement of this right undeniably impinges upon an individual’s ‘liberty’ in our free and democratic society*”.

22. The Supreme Court of Canada has also stated, with respect to the disclosure of private information and its impact on a person’s liberty under section 7 of the *Charter*:

When a private document or record is revealed and the reasonable expectation of privacy therein is thereby displaced, the invasion is not with respect to the particular

document or record in question. Rather, it is an invasion of the dignity and self-worth of the individual, who enjoys the right to privacy as an essential aspect of his or her liberty in a free and democratic society.

23. The Supreme Court of Canada has also stated that the right to liberty in section 7 of the *Charter* includes the “*right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference*”.

24. In Canada, it is a principle of fundamental justice that where an individual has a reasonable expectation of privacy in personal and confidential information, that information may not be disclosed to third parties without his or her consent.

25. Further, section 8 of the *Charter* provides that everyone has the right to be secure against unreasonable search or seizure.

26. Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser each have a reasonable expectation of privacy in the personal health information pertaining to them.

27. Drs. Lavranos and Milburn, as well as their patients, also have a reasonable expectation of privacy in those patients’ personal health information in respect of which Drs. Lavranos and Milburn are custodians.

28. Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser have not consented to the disclosure of their personal health information to the Minister, as contemplated by section 110 of the *FMA 2024*, clause 110(1)(na) of the *PHIA*, or the *Electronic Health Records Regulations*.

29. Further, Drs. Lavranos and Milburn do not wish for professional ethical reasons to be forced to disclose personal health information to the Minister as contemplated by section 110 of the *FMA 2024*, clause 110(1)(na) of the *PHIA*, or the *EHRRs*, whether without the consent of the patients to whom such personal health information pertains, or at all.

30. Section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* enable the Minister to force custodians to disclose Nova Scotians' and others' personal health information, including that of Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser, to the Minister, without their consent.

31. Further, section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* enable the Minister to force Drs. Lavranos and Milburn to violate their duties of confidentiality to their patients by disclosing their personal health information to the Minister, without their patients' consent. In so doing, section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* seriously compromise the doctor/patient relationship, and therefore undermine the abilities of Drs. Lavranos and Milburn to effectively care for their patients.

32. Section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* therefore violate sections 7 of the *Charter* and cannot be saved by section 1. Accordingly, they are unconstitutional and of no force or effect.

33. Further, or in the alternative, section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* enable the Minister to carry out an unreasonable search and seizure of all Nova Scotians' and others' personal health information, including that of Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser.

34. Further, or in the alternative, section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* enable the Minister to carry out an unreasonable search and seizure of personal health information in the possession of Dr. Lavranos and Dr. Milburn.

35. Section 110 of the *FMA 2024* and clause 110(1)(na) of the *PHIA* therefore violate section 8 of the *Charter* and cannot be saved by section 1. Accordingly, they are unconstitutional and of no force or effect.

36. Further, or in the alternative, the *EHRRs* enable the Minister to force custodians to disclose Nova Scotians' personal health information, including that of Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser, to the Minister, without their consent.

37. Further, or in the alternative, the *EHRRs* enable the Minister to force Drs. Lavranos and Milburn to violate their duties of confidentiality to their patients by disclosing their personal health information to the Minister, without their consent. In so doing, the *EHRRs* seriously compromise the doctor/patient relationship, and therefore undermine the abilities of Drs. Lavranos and Milburn to effectively care for their patients.

38. The *EHRRs* therefore infringe s. 7 of the *Charter* and cannot be saved by s. 1 of the *Charter*. Accordingly, they are unconstitutional and of no force or effect.

39. Further, or in the alternative, the *EHRRs* amount to an unreasonable search and seizure of Nova Scotians' personal health information, including that of Dr. Lavranos, Dr. Milburn, Ms. Hipson, Ms. Henneberry and Ms. Kaiser, by the Minister.

40. Further, or in the alternative, the *EHRRs* enable the Minister to carry out an unreasonable search and seizure of personal health information in the possession of Dr. Lavranos and Dr. Milburn.

41. The *EHRRs* therefore infringe s. 8 of the *Charter* and cannot be saved by s. 1 of the *Charter*. Accordingly, they are unconstitutional and of no force or effect.

The applicants expect to file affidavits from the following witnesses, dealing with the following subjects:

<i>Name of witness</i>	<i>Subject</i>
Dr. Aris Lavranos	Standing; reasons for joining this proceeding
Dr. Chris Milburn	Standing; reasons for joining this proceeding
Susan Kaiser	Standing; reasons for joining this proceeding

Valerie Henneberry	Standing; reasons for joining this proceeding
Shelley Hipson	Standing; reasons for joining this proceeding
Patrick Manning (NSCLA)	Standing; reasons for joining this proceeding
Selena Bird	Background/non-contentious information
TBD	Medical ethics and practice
TBD	TBD – responding to any affidavit evidence (whether expert or otherwise) tendered by the respondent

Motion for directions and date

At 11:00 a.m. on Tuesday, March 19, 2025, the applicants will appear before a judge at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia, B3J 1S7 (telephone number (902) 424-7968) to make a motion for an order giving directions and appointing a time, date, and place for the hearing. The judge may provide directions in your absence, if you or your counsel fail to attend.

Affidavit on motion for directions

The applicants file the affidavit of James Manson, sworn on November 25, 2024, as evidence on the motion for directions. A copy of the affidavit is delivered to you with this notice.

You may participate

You may file with the court a notice of contest, and any affidavit for the motion for directions, no more than twenty-five (25) days after this notice is delivered to you or you are otherwise notified of the application. Filing the notice of contest entitles you to notice of further steps in the application.

Possible final order against you

The court may grant a final order on the application without further notice to you if you fail to file a notice of contest, or if you or your counsel fail to appear at the time, date, and place for the motion for directions.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary at The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia B3J 1S7 (telephone no. (902) 424-7968).

When you file a document you must immediately deliver a copy of it to the applicants and each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

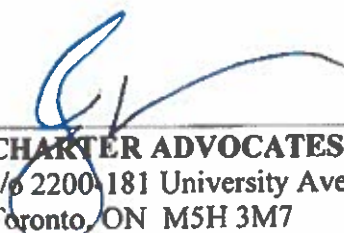
The applicants designate the following address:

**James Manson, Senior Lawyer
Charter Advocates Canada
c/o 2200-181 University Avenue
Toronto, ON M5H 3M7**

Documents delivered to this address are considered received by the applicants on delivery.
Further contact information is available from the prothonotary.

Signature

Signed November 29, 2024



CHARTER ADVOCATES CANADA
c/o 2200-181 University Avenue
Toronto, ON M5H 3M7

James Manson

Tel: (416) 888-9254

E-mail: jmanson@charteradvocates.ca

Counsel for the Applicants

Prothonotary's certificate

I certify that this notice of application was filed with the court on
November 29th, 2024.



Prothonotary

Morgan Reid
Deputy Prothonotary