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New lawsuit aims to invalidate travel ban for seasonal residents

Special order in place since May 15 shuts border to all seasonal residents

[Patrick Butler](#) · CBC News · Posted: Jun 03, 2020 4:19 PM NT | Last Updated: June 3



Lawyer Geoff Budden says the still-to-be-certified class-action suit highlights an 'inconsistency' in how COVID-19 restrictions are being applied. (Marie Isabelle Rochon/Radio-Canada)

A new class-action lawsuit aims to invalidate rules barring seasonal residents from entry into Newfoundland and Labrador during the pandemic.

The provincial government has systematically refused entry to almost all non-residents in an effort to restrict the spread of COVID-19 with a special order in place since May 15.

Lawyers Geoff Budden and Bob Buckingham, who are preparing the suit, which has not yet been certified, on behalf of an unnamed number of clients, say the rules violate the charter rights of people like Sharon and Warner Koehler, a couple from Elmira, Ont., who are the representative plaintiffs for the suit.

'Demonstrably less risky'

Budden said the suit's primary argument relies on the Koehlers's mobility rights under the Charter of Rights and Freedoms, but a statement of claim filed June 2 in Newfoundland and Labrador Supreme Court also states restrictions to interprovincial travel fall outside the province's jurisdiction.

The Koehlers have owned a house in Bay Roberts since 2008 and are prepared to self-isolate immediately upon arrival in Newfoundland, according to Budden. For the last decade, their house has also been used to operate Sea Cliff House Productions, a

business "suffering economic losses" given their inability to cross the provincial border, he said.

Budden said the situation seasonal residents currently face reveals an "inconsistency" in how COVID-19 restrictions are being applied.

While Newfoundland residents, no matter their point of departure, are guaranteed entry, seasonal residents are automatically shut out, despite people like the Koehlers, for whom Budden argued travel to the province would be "demonstrably less risky."

- [She was denied entry for her mother's funeral. Now she's taking the N.L. government to court](#)

Mobility rights infringed?

Freedom of movement, enshrined under Section 6 of the charter, guarantees citizens and permanent residents can move freely, reside and work in any province of their choosing. But those freedoms may be limited under Section 1 of the charter, a provision created to strike a balance between individual rights and broader societal interests.

Budden said the "the government clearly has has some authority" to limit rights in order to contain COVID-19.

"The question is did they exercise that authority in accordance with with Section 1," he said. "We believe they did not."



Premier Dwight Ball says the rules have been put in place to protect Newfoundlanders and Labradorians. (Government of Newfoundland and Labrador)

At Wednesday's COVID-19 briefing, Premier Dwight Ball defended the measures, arguing they remain necessary to avoid spreading the virus.

"This is put in place to protect Newfoundlanders and Labradorians, it's not about shutting people out," Ball said.

"Primarily, the biggest concern for us is stopping the spread of the virus."

2nd suit filed against province

The class action Budden and Buckingham are preparing is the second lawsuit filed against the province since the government tightened restrictions at the border. Last month, Alberta resident Kim Taylor filed suit against the province after initially being refused entry to Newfoundland and Labrador [for her mother's funeral](#). Hearings for that suit are slated to begin the week of Aug. 4.

The class action launched by seasonal residents has not yet been certified, and Budden said given the pandemic's impact on the province's court system, it could be months before the suit goes before a judge.

He said he hopes news of a class action — and the damages the province could eventually be forced to pay — will push the provincial government to reconsider the current rules.

"We don't anticipate the court, or for that matter the lawyers, to be able to respond within timelines that would salvage the plans of so many people," Budden said.

"They can amend it. And we're calling on the government to do that out of concern for these individuals, but also out of concern for the taxpayer, who is at risk here, we believe, of substantial damages if these people are improperly denied their rights."

Budden did not give the number of clients involved in the suit to date.

"We're not talking hundreds, at this point."

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