

Provincial border bans during Coronavirus spark lawsuits

By [christopher](#) - June 7, 2020



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

Since last month, the provincial government has systematically refused entry to almost all non-residents in efforts to restrict the spread of COVID-19. A special order in place since May 15 closes the border to all seasonal residents.

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.”

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.”

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