

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

Citation: *In Re Supreme Court Staff Parking No. 2; High Sheriff v. Registrar*

2007NLTD176

Date: 20071017

Docket: 200401T1686

IN THE MATTER OF

the *Judicature Act*

AND

IN THE MATTER OF

the Courthouse, St. John's,
Newfoundland and Labrador, and the
Supreme Court Water Street Parking
Lot (the "Parking Lot") thereof

IN THE MATTER OF

Allegations of improper use of the
Parking Lot by: Jim Saunders, Kim
Byrne, Maureen O'Quinn, Wendy
Penney, Dawn Reynolds, Steve
Brushett, Jay Keating, Kim Stockwood,
Chris Coates and John Doe (representing
Persons Unknown).

BETWEEN:

**THE HIGH SHERIFF OF NEWFOUNDLAND
AND LABRADOR (A)**

APPLICANT

AND:

THE REGISTRAR OF THE SUPREME COURT (A)

RESPONDENT

Before: The Honourable Chief Justice J. Derek Green

Place of hearing: St. John's, Newfoundland and Labrador

Held:

COURT ADMINISTRATION – Authority of Registrar to control use of court facilities including parking areas. - Variation of ex parte interim injunction restraining unauthorized use of court staff parking lot without permits issued by Registrar.

Appearances: John MacDonald, High Sheriff of Newfoundland and Labrador
David Jones, Q.C., Registrar of Supreme Court of Newfoundland and Labrador.

Authorities Cited:

CASES CONSIDERED: Re Estate of McDonald (1860), 4 Nfld. L.R. 526

REASONS FOR JUDGMENT

GREEN, C.J.:

INTRODUCTION

[1] This is an application brought by the High Sheriff of Newfoundland and Labrador to vary an Ex Parte Interim Order made by me on March 17, 2004 relating to the use and occupation of the parking lot in front of the Water Street entrance of the Court House in St. John's.

[2] At present, the Order restricts persons “who are not staff of the Supreme Court and do not have a permit issued by the Registrar” from parking on or otherwise occupying the parking lot.

[3] The Sheriff's application requests the Order to be amended "to permit the Registrar to issue two (2) permits to staff of the Sheriff's Office selected by the High Sheriff ..., but involved with the work of the Supreme Court".

Background

[4] The original Order came about in unusual circumstances. It was directed at a disturbing situation that had developed with respect to the use and occupation of the parking lot by persons who were not Supreme Court staff in a manner that was determined to be disruptive of the proper use of the lot, an interference with court staff being able to perform their jobs properly and efficiently and, as well, a threat of potential breaches of the peace. Persons not connected with the court as well as a small number of public service employees and Sheriff's officers began unilaterally, without a permit from the Registrar, to take over specific parking spaces and to arrange their vehicles in such a way as to block other spaces that could have been available for regular lot users. There were verbal confrontations between court staff and some of these other persons, and a deterioration in the relationships between some court staff members and Sheriff's Officers in the courthouse was noted.

[5] It was also noted in affidavit evidence that the parking on the lot by public service employees and Sheriff's office staff "was done with a view to highlighting the long standing issue of lack of downtown parking for other employees of the provincial government". The occupation and partial blockading of the lot was determined to be undertaken "in furtherance of another employment-related agenda" and did not involve a *bona fide* claim to a right to park on the lot.

[6] As a result, an interim Order was issued restraining certain named individuals who were believed to have been involved in the improper use of the lot, as well as "all persons having notice of ... [the] ... order who are not staff of the Supreme Court and do not have a permit issued by the Registrar", from parking on or occupying the lot until further order. The Order specifically recognized the right of persons feeling aggrieved by the Order to apply to vacate or vary the Order.

[7] Since the date of the issuance of the Order, one application has been made to vary the Order by removing the name of one individual who was originally named as the subject of the Order. The Court was satisfied that that person had not been involved in the activities enjoined and ordered that her name be removed from the record.

[8] With the exception of the one amendment noted, the Order has continued in force without any other application (until now) and has, for the past three and a half years, effectively formed the basis of the regime regulating parking on the lot without further incident. In fact, it would be remiss of me if I were not to say that once the “tumult and shouting” died down, relations appear to have improved markedly between court staff and officials of the Sheriff’s office. Dealings between the two groups proceed on the basis of mutual respect and appreciation for the different and vital roles they both play in the court system.

The Current Application

[9] The Sheriff’s application seeks a limited variation in the current parking regime.

[10] The Sheriff has pointed out in his argument that there has been an historical closeness in the relationship between the Office of the High Sheriff and the Supreme Court. The Sheriff has been always regarded as the “highest executive officer of the court”.¹ As such, his office has responsibility for enforcing the orders of the court, controlling and regulating the jury process and providing security within the precincts and curtilage of the court. The role of the Sheriff and his officers is therefore inextricably bound up with court operations and can be said to be as much a part of the fabric of the court as administrative court staff.

¹ **Re Estate of McDonald** (1860), 4 Nfld. L.R. 526

[11] The Sheriff put it this way in his affidavit evidence:

5. THAT since the creation of the Supreme Court of Newfoundland and Labrador the Office of the High Sheriff, and its predecessors, has been the office designated with the duty of assisting the Court and enforcing the orders of the court.

6. THAT without the means to enforce the orders of the Court through the Sheriff's Office there would be dissolution of the powers and inherent jurisdiction of the court.

7. THAT officials with the Sheriff's office provide services to the Court, both by statute and common law, and court security to several locations of the Supreme Court in the City of St. John's requiring frequent trips to these locations and to other Government Departments and agencies in furtherance of the requirements and orders of the court.

8. THAT the inability to have access to secure and readily available parking by those officials within the Sheriff's Office who frequently must leave the building in furtherance of the orders of the Court and on matters effecting [sic] the Sheriff's Office is negatively impacting the ability of the Sheriff's Office to effectively and efficiently perform it's [sic] functions.

[12] Although it is not stated in the affidavit evidence, I take judicial notice of the fact that the Office of the High Sheriff is located in close proximity (three doors to the west) of the Courthouse on Duckworth Street. As well, although in theory any Sheriff's Officer could be assigned to work in the Supreme Court in one of its three St. John's locations² or in the Provincial Court which is housed in separate unconnected premises, as a general rule the core staffing function at each location

² The main courthouse, the Court of Appeal Building on Duckworth Street immediately to the east of the main courthouse, and the Unified Family Court Building on King's Bridge Road.

is generally performed by the same designated officers. These individuals over time have come to be known and regarded as a particular building's officers.

[13] In his submissions to the court, the Sheriff indicated, however, that his primary purpose in making the request to accommodate parking by officials of his office was *not* to provide parking for Sheriff's Officers who regularly work in the Courthouse; rather it was to provide parking for certain *management personnel* who work in the administrative offices of the Office of the High Sheriff located, as I indicated above, three doors to the west of the Courthouse. The argument was that these individuals, especially those who are responsible for management of court security and who must move between court locations or attend meetings at off-site locations relating to security, provide an essential service to the court just as much as Sheriff's Officers themselves do, and if they are not able to have access to parking the ability to do their jobs will be impeded and hence, the service to the court will suffer.

[14] Although the Sheriff said he would prefer to have two parking spaces specifically assigned for use of personnel designated by him, he emphasized that whatever arrangement was made, he was prepared to give an assurance that the individuals selected would comply with conditions attached to any permit in the same manner as court employees now do. He pointed out that the original reason for restricting parking on the lot was no longer current. There was no indication that any Sheriff's Officers were in any way presently involved in interfering with the proper use of the lot and should not therefore be subject to an injunctive order that had been put in place for another purpose.

[15] In essence, therefore, the arguments in favour of allowing a limited number of officials of the Sheriff's Office to park on the lot are:

- The work of the Sheriff's office, particularly that of the Sheriff's officers, is highly integrated in the operations of the court;
- The original purpose of the initial Order does not apply to the individuals who would now seek to benefit from parking privileges;

- The work of the court, insofar as it is assisted by officials of the Sheriff's Office, would be enhanced if officials who have to move between locations could do so in the knowledge that they will have easily accessible parking when they return to the courthouse

Response of the Registrar

[16] The Registrar filed an affidavit in response to the application. When court staff became aware of the application a meeting was held at which concerns were raised about the appropriateness of permitting any more individuals to use the parking lot.

[17] It was pointed out by the Registrar that although 40 permits have been issued by the Registrar to Trial Division and Court of Appeal staff, there are only 22 parking spaces available (in fact reduced to 17 in the winter months). Occupation is accomplished, for the most part, on a "first come, first served" basis. There are, however, a number of parking spots designated for the use of specific individuals especially those whose job functions entail frequent coming and going to and from the Courthouse during the work day.

[18] It was also pointed out that the parking spaces are not all accessible directly from the street and that, in some cases, cars have to be parked three-deep. The ones on the "outside" have to be moved to allow persons parked "inside" to leave. The effective regulation of the lot therefore has to be accomplished by ensuring that staff in the courthouse are always available on short notice to move their vehicle if it is blocking the car of another staff member who from time to time may have to leave the building on court business, such as traveling to off-court file storage sites or going to the Unified Family Court. The conditions attached to the permits issued by the Registrar therefore require that all staff must park "co-operatively". Concern was expressed that if persons who do not work in the court building are permitted to park on the lot, this co-operative approach to making the system work in a practical way would potentially be impeded and, as a

consequence, their work for the Court “may be frustrated or delayed to the detriment of the court”.

[19] The Registrar also emphasized that in the near future, additional personnel (upwards of 6 new positions) will be hired to work in the Courthouse and that their anticipated requests for permits will make the demands on available spaces all the more acute. The oversubscription of the lot by courthouse staff is, and will be, severe enough without adding to the problem by allowing two additional spaces to be commandeered by others from outside the building.

[20] Finally, the Registrar pointed out that the Office of the High Sheriff has already arranged for the use of two parking spots on the other side of the Water Street parking area that is under the control, not of the Court, but of the Corrections Department. It was argued that those spaces could and should be used to accommodate the two persons that the Sheriff is now promoting for access to the court parking area. It was pointed out by the Sheriff, however, that the two existing spots in the Corrections area of the lot are, by arrangement with Corrections, specifically designed to accommodate the drivers of the prisoner transport vehicles operated by the Sheriff’s office. The Sheriff argued, therefore, that that does not address the current need.

[21] The arguments made by the Registrar on behalf of existing lot users can be summarized as follows:

- The lot is oversubscribed and will be more so when contemplated additional court staff are hired in the near future;
- The court staff have historically been entitled to park on the lot and the introduction of others will interfere materially with that privilege;
- It is vital that uses of the lot by persons who work in the court buildings so as to enable vehicles to be moved to accommodate others who come and go from time to time during the work day; without that flexibility, the parking arrangement would become unworkable;

[22] The problem presented by this case would not, of course, be an issue if there were sufficient parking space available in the downtown area to accommodate all persons who work in or have to attend at the court buildings as well as the Sheriff's offices. Those who are lucky enough to have access to parking (even in the "first come, first served" environment that exists on the Water Street lot) naturally value their privileges and do not want to see them eroded. Court staff members quite understandably regard themselves as having historic priority rights to park in this area. On the other hand, staff members of the Sheriff's Office feel unfairly treated in not having the same privileges even though they provide vital services to the Court. There is no easy practical or inherently right answer to this problem.

Analysis

[23] As is evident from the discussion above, much of the argument was directed to the practicality, or lack thereof, of effective administration of the lot if others who do not work in the Courthouses of the Trial Division and Court of Appeal were to be allowed to use the parking area. It is important to realize, however, that the practicality of administration is not the real consideration that must go into determining whether the injunctive order that was originally issued should now be varied.

[24] The original purpose of the Order was not to implement a general parking regime for the parking lot in question (although given the length of time it has been in force, it has in practice developed into a general mechanism for governing parking in that location).

[25] The original purpose was very specific: to address and eliminate a particular type of apparently unauthorized and illegal activity caused by persons trespassing on the lot in a way that was causing what appeared to be deliberate obstruction of its use to the detriment of the operation of the Court.

[26] The original Order thus did not seek to create and impose a set of parking regulations. It merely restrained improper usage that was perceived as occurring at that time. At paragraph [8] of my Reasons for granting the original Order, I concluded that:

there is a strong prima facie case to support the conclusion that the Registrar, on behalf of the court as an institution, has, in the present circumstances, an ability to control the use and occupation of the parking lot

[27] I based that conclusion on the facts that by virtue of his office: (i) the Registrar has administrative day-to-day control over the use of court facilities, including the precincts and curtilage of the courthouse, which would include appurtenant parking areas contiguous to the building; and (ii) the Registrar, on behalf of the Court as an institution, held a possessory licence in the lot from the provincial Department of Works and Services, the owner of the courthouse building, sufficient to enable him to exercise control over the day-to-day use and occupation of the lot and to remove trespassers therefrom.

[28] The injunctive order I granted was designed to support and render effective the *Registrar's* right to control the use and occupation of the parking lot. It did not create or confer a right on the Registrar to do that. The right to control the lot was pre-existing. I concluded that the *status quo ante* should be preserved. Since, up to that time, the Registrar had restricted the access to the lot to court staff members, the injunctive order restraining the improper activity was designed to ensure that those who were not court staff members and who did not hold a permit from the Registrar could not park on or occupy the lot.

[29] The request of the High Sheriff does not fall under the umbrella of the original mischief that led to the granting of the Order in the first place. There is no indication that officials of the Sheriff's office are acting in an unauthorized or illegal manner with respect in obstructing occupation by lawful users. On the contrary, I have been given assurances that they would, if allowed to park there, be fully compliant with any restrictions placed on them by the Registrar.

Furthermore, I do not believe that lawful use by officials of the Sheriff's office, pursuant to proper permit from the Registrar, would amount to a disruption of the operations of the Court in any manner equivalent to the disruption that was sought to be prevented when the original Order was granted. While no doubt the potential presence of two more individuals seeking a place to park their vehicles will cause further inconvenience to the current users, it cannot be said that the administration of justice will be affected in a material way.

[30] There is no real basis, therefore for subjecting the two individuals selected by the High Sheriff to the strictures of the injunction order as it was originally conceived. Obviously, if they were in the future to behave in a manner that does disrupt the use of the lot by others and impede proper usage by court staff, there is nothing to preclude the Registrar from revoking any permits they might then have or from bringing another application to restrict such usage. As of the present time, however, there is no need for the injunction to apply to the two individuals whom the Sheriff wishes to be accommodated. Accordingly, I am prepared to vary the Order in accordance with the request.

[31] It is important to appreciate, however, that the non-application of the Order to the two designated Sheriff's officials does not mean that they thereby gain the right to park on the lot. I stress again that the Order does not confer entitlement to park on anybody; it merely restrains, for a very limited and specific purpose, the ability of certain persons to park there without the approbation of the Registrar. The *entitlement* to park comes from the exercise of discretion by the Registrar, as the official on behalf of the court who controls the use and occupation of the lot, to allow any particular applicant to park. This is so whether the Order exists or not. Although up until now the Registrar's discretion has been exercised, for very good and sensible reasons, only in favour of court staff members, there is no reason in principle why the Registrar could, in the *bona fide* exercise of his discretion, allow non-court staff members to park on the lot if a good case could be made.

[32] While that decision about whether parking privileges should *in fact* be extended to two of the Sheriff's staff once the injunction order is lifted in respect of them and, if so, what conditions should be attached to those privileges, is the

Registrar's, and not the Court's, to make, I consider it appropriate, given the interest in and concern about the practical implications of a potential change in the parking regime, to outline what I believe should be some of the considerations that should go into the exercise of that discretion. Those considerations could include:

1. The primary consideration in granting a parking permit in a given case should be the closeness of the connection between the proposed permit holder and the work and operating life of the Trial Division and Court of Appeal. The Sheriff's application in this matter itself acknowledged that the persons from his office who should be permitted to park should be "involved with the work of the Supreme court". Priority should be given to those whose connection is closest.
2. There should be a recognition that court staff have historically exercised the right to use the lot and have a reasonable expectation that the right to have a parking permit is virtually a job benefit;
3. It should be recognized that the lot is inadequate to accommodate all potential users and the more persons who potentially use the lot, the greater the inconvenience there will be for all; there is therefore a limit to the numbers who can be accommodated no matter how meritorious a particular applicant may be;
4. It should also be recognized that the Office of the High Sheriff, especially the Sheriff's Officers themselves, are an integral part of many court operations and historically have a close connection with the court;
5. The Sheriff's officers who are assigned to work in the Courthouse and the Court of Appeal building are generally regarded as having their place of employment in those buildings;
6. The closer the actual work of Sheriff's Office personnel is to the actual operations of the courthouses themselves, the greater would be the claim to exercise parking privileges equivalent to those of court staff members.
7. The Sheriff's office is located in close proximity to the courthouse and it is no further away from the parking lot than the Court of Appeal building where some court staff who have permits work;
8. It may be appropriate for some permit holders to be assigned, as is now the case, specific spaces if it is perceived that to do so will enhance the efficient operation of the overall parking regime;

9. An important factor is determining whether a permit should be granted is whether the nature of that individual's work and his or her availability allows for the effective and efficient movement of vehicles on the lot to enable lot users to gain ingress to and egress from the lot during employment hours;
10. In determining the maximum number of 'first come, first served' permits that should be issued for the limited numbers of available spaces, consideration should be given to the extent that arrangements such as car pooling may reduce demand on actual lot usage.

[33] It should also be noted that once a permit is granted to an individual, there is no entitlement to continuation of that permit indefinitely; it can be revoked or modified by the Registrar in the exercise of his discretion if he perceives that the parking privileges are being abused or conditions of the permit are not being observed or that total numbers of permits issued are overwhelming the effective operation of the parking regime or if others with a greater claim to usage need the space or for other good and valid reasons.

Conclusion and Disposition

[34] There is no basis for continuing the injunctive order against the two officials of the Office of the High Sheriff designated by the High Sheriff as needing access to parking on the Water Street lot. Accordingly, I will make the following order and declaration:

1. The Interim Order (Ex Parte) made on March 17, 2004 is hereby varied by adding an additional paragraph as follows:
 5. Notwithstanding anything contained in this Order, it shall not apply to two persons employed in the Office of the High Sheriff and designated in writing by him from time to time as eligible to apply to the Registrar for a permit to park on the Parking Lot
2. It is declared that the Registrar has the discretion:

- (a) to issue permits to park on the Parking Lot to the two persons designated by the High Sheriff pursuant to paragraph 5 of the amended order, subject to such conditions and restrictions as may be appropriate to promote the overall effective and efficient use of the parking lot for the benefit of all users; and
- (b) to revoke any such permits from time to time or to impose revised conditions and restrictions thereon as circumstances may dictate.

[35] No party spoke to the issue of costs. It is not appropriate that any order of costs be made in this case.

Chief Justice