IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Public Safety) v. Cochrane, 2008 NSSC 60

Date: 20080222
Docket: SK 290552
Registry: Kentville

Between:

The Director of Public Safety

Plaintiff

v.

Michael Cochrane, Laura Cochrane, Mica Cochrane and
West Point Homes Limited

Defendant

Judge: The Honourable Justice Gregory M. Warner

Heard: February 21st and 22nd, 2008 at Kentville, Nova Scotia

Written Decision: February 29, 2008 (Oral Decision rendered on February 22, 2008)

Counsel: Glenn R. Anderson, Q.C., Counsel for the Applicant
Michael Cochrane, Laura Cochrane and Mica Cochrane,
Respondents, Self-represented and
West Point Homes Limited, Respondent, Self-represented

By the Court:

[1] The Director of Public Safety for the Province of Nova Scotia applies to this Court under the *Safer Communities and Neighbourhoods Act*, for an Order declaring that “ property” at 42 Douglas Avenue, Berwick, is being used for a “specified use” as defined in the *Act*, which use causes the community and neighbourhood to be “adversely affected”, as defined in the *Act*, and for various remedies to cause the use to stop.

[2] This *Act* is relatively new legislation (proclaimed into force on July 14th, 2006) in Nova Scotia. Similar legislation was proclaimed in Manitoba on July 6th, 2001, in Saskatchewan on November 15th, 2004, and in Yukon on November 27th, 2006. Four decisions from Saskatchewan constitute the only reported interpretation and application of the legislation.

Summary of the *Act*

[3] A person, who believes that their community or neighbourhood is “adversely affected” by specified activities indicating that “the property is being habitually used for a specified use”, can complain under the *Act* to the Director of Public Safety (Section 3).

[4] “Adversely affected” is defined as being an activity that negatively affects the health, safety or security of one or more persons in the neighbourhood or community, or interferes with the peaceful enjoyment of one or more properties in the community or neighbourhood (Section 2(2)).

[5] A “specified use”, in relation to property, means a use of the property (i) for the sale of liquor without a license; (ii) for the possession, use, consumption, sale, transfer or exchange of a controlled substance as defined in the *Controlled Drugs and Substances Act* of Canada in contravention of that Act; (iii) for prostitution or activities related to prostitution; (iv) for illegal gaming activities; or (v)for any other activities prescribed under the Regulations (none are presently prescribed). (Section 2(1)(i))

[6] When the Director receives a complaint, he may investigate it, decide not to act on it, send a warning letter to the person who owns or occupies the property, attempt to resolve the complaint informally, or may take any other action he thinks appropriate (Section 4).

[7] In addition, the Director may apply to the Supreme Court for a Community Safety Order (Section 5).

[8] The Court may make a Community Safety Order if it is satisfied of two things: first, activities have been occurring on or near the property that give rise to a reasonable inference that it is being habitually used for a specified use - in this case, “the possession, use, consumption, sale, transfer or exchange of a controlled substance”; and second, the Court is satisfied that the community or neighbourhood is adversely affected by that activity (Section 7(1)).

[9] If the Court is satisfied on both counts, it may issue an Order. The Order must contain a description of the property, a provision enjoining all persons from causing, contributing to, permitting or acquiescing in the activities; and a provision requiring the named respondents to do everything reasonably possible to prevent the activities from continuing or reoccurring (Section 7(3)).

[10] The Order may include the following: a provision requiring any or all persons to vacate the property on a date specified by the Court; a provision terminating any tenancy agreement or lease; a provision requiring the Director to close the property from use and occupation on a specified date and to keep it closed for up to 90 days; and any other "necessary" provision to make the order effective (Section 7(2)).

[11] The Court may make an Order requiring the minister to close the property immediately where the activities are "a serious and immediate threat to the safety and security of one or more occupants of the property or persons in the community or neighbourhood" (Section 8).

[12] Of significance in this legislation is the provision that if an Order requires the Director to close a property, "all occupants of the property and any other persons at the property shall leave it immediately upon request of the Director", even if not served with the order (Section 24(1)). Section 24 places certain obligations on the Director to assist persons (other than respondents) without alternative accommodations to find accommodations (Section 25).

[13] Section 26 requires the Respondent(s) to pay for the costs of closing if the Order requires the Director to close it (Section 26).

[14] The legislation makes it an offence punishable on summary conviction for a person to interfere with, remove a posted order, enter a closed property, or fail to comply with a Community Safety Order, the penalties for which include fines and/or imprisonment. In short, there are penal consequences for failure to comply.

Existing Case Law

[15] In **Saskatchewan (Director of Community Operations)** v. **M. (S.M.)**, 2006 CarswellSask 85 (SQB), the Director alleged that the occupant, the 17 year old daughter of one of two sisters who owned the building, was using the property for the frequent use and sale of marijuana to teenagers. Much of the evidence appeared to be by way of affidavits and cross-examination on them. The Director received 14 complaints from neighbours of noisy parties and other activity consistent with drug activity, and the investigator testified as to his observations of the activities at the property. The respondents denied the allegations and filed affidavits with 17 letters from their guests (other teenagers) denying the allegations of drug activity. The Court stated: "The Act anticipates that the Director will put forward evidence, through the investigator, that the investigator has gained through confidential sources. Given the serious consequences for the respondents, the Court must carefully consider the quality of the evidence

received"(para.18). The Court held that the evidence of the Director was not sufficiently detailed, or of a quality, that should lead to the consequences, and dismissed the application.

[16] In **Saskatchewan (Director of Community Operations)** v. **Carroll**, 2006 CarswellSask 480 (SQB), a drug investigation resulted in four counts against the occupant of a residence. As a result of the charges, the tenant gave an undertaking to the criminal court to be of good behaviour while the charges were outstanding. On an application for a community safety order, the Court held that, while satisfied that illegal drug activity occurred at the residence, the Director had failed to show the community was adversely affected, because the occupant was constrained by the criminal court undertaking - a breach of which would lead to quick apprehension and removal from the property, and there was no evidence that the activities were current.

[17] In **Carroll**, the Court made four observations with respect to the nature of the *Act*, and requisites for an order. Of significance were his conclusions that the Director establish habitual use for a specified activity and an adverse community effect resulting in a present need for an order, and, while a high standard of proof was not mandated, a reasonable inference must be a logical inference (presumably not a speculative inference).

[18] In **Saskatchewan (Director of Community Operations)** v. **Li**, 2007 CarswellSask 156 (SQB), five persons occupied rented premises, to which there was a high volume of traffic. One of the five occupants had been jailed for drug trafficking and had a significant prior criminal record for trafficking. Three others had criminal records related to drugs. Rent was in arrears, but the respondent landlord feared for her safety if she attempted to evict the occupants. I presume that is why the Director got involved. The Court granted the order, which included termination of the tenancy. Justice Currie said: " While it refers to criminal activities, the [*Act*] does not purport to legislate criminal law which is the exclusive domain of Parliament. No person is at risk of being convicted of a criminal offence under the Act. No person is at risk of being deprived of his or her liberty under the Act. An inference under the Act leads only to a disposition relating to the property under the powers of the [Province] to legislate property and civil rights."

[19] In **Saskatchewan (Director of Community Operations)** v. **Mercer**, 2007 SKQB 271, the property was owned by a mother and occupied by her daughter. Video surveillance of the property showed that many visitors repeatedly came to the property for brief visits. A frequent visitor to the house had been convicted of drug offences and was currently charged drug and related criminal offences. The respondents acknowledged that many persons came to the property seeking drugs, but were sent away, and not sold drugs. The Court found that the respondent's evidence did not explain the observed activity, and accepted the evidence as being sufficient to establish that the respondent failed to exercise due diligence in supervising and controlling the use of the property, and issued an order.

Constitutional Validity

[20] The Court had some initial concern as to whether this is legislation within the constitutional authority of a provincial legislature pursuant to Sections 92(13) - property and civil rights, and 92(15) - imposition of fines etc. to enforce provincial laws, of the *Constitution Act*, 1867. I consulted Peter Hogg's **Constitutional Law of Canada**, 5th Edition Supplemented (Carswell, looseleaf to 2007- Release2) Chapter 18, and rely on his analysis of the case law, together with my interpretation of **Rio Hotel Ltd. V. New Brunswick (Liquor Licensing Board)**, [1987] 2 S.C.R. 59, and **R. V. Morgentaler** [1993] 3 S.C.R. 463.

[21] My conclusion is that, while a requisite for an order is a criminally-related activity, the pith and substance of the legislation is a bone fide attempt to control the use of property, that is, to control the adverse effect of certain activities on a property on neighbouring properties. This matter falls within section 92(13) of the Constitution Act. In addition, the province has the constitutional authority under Section 92(15) of the *Constitution Act*, 1867, to impose punishment by fine, penalty or imprisonment for the purpose of enforcing otherwise valid provincial laws.

[22] To reach a conclusion, I am required to draw a distinction between valid provincial law with an ancillary penalty, and provincial law that is invalid as being, in pith and substance, criminal law. This distinction is sometimes elusive and has created some uncertainty in the case law.

[23] In **Bedard** v. **Dawson** [1923] S.C.R. 681, the Supreme Court upheld a provincial law authorizing the closing of "disorderly houses" which were primarily defined as houses in respect of which there have been criminal convictions for gambling or prostitution. While on its face the provincial law appeared to be simply supplementing criminal law by adding new penalties, the Court upheld the law, characterizing it as being, in pith and substance, in relation to the use of property.

[24] In **Provincial Secretary of Prince Edward Island** v. **Egan,** [1941] S.C.R. 396, the Court upheld a provincial law that automatically suspended the driver's licence of anyone convicted under the Criminal Code of impaired driving.

[25] In the 1960s there were a series of cases which upheld the provincial power to impose or create offences of careless driving, failing to remain at the scene of an accident, and failing to provide information under certain securities legislation. In each case these laws were similar to existing federal laws, and the Court found no inconsistency which would render the provincial law inoperative.

[26] In **N.S. Board of Censors** v. **McNeil** [1978] 2 S.C.R. 662, Supreme Court of Canada, with one dissent, upheld provincial film censorship, even though it related to matters dealt with under federal criminal legislation.

[27] In **Attorney General of Canada and Dupond** v. **Montreal** [1978] 2 S.C.R. 770, a municipal bylaw prohibiting all assemblies, parades or gatherings in the public domain such as

parks and streets was upheld as being valid regulation of municipal public property even though its effect was to prevent some public disturbances.

[28] The case law does not all go one way. In **Westendorp** v. **The Queen** [1983] 1 S.C.R. 43, the Supreme Court unanimously struck down a municipal bylaw that prohibited a person from remaining on the street for the purpose of prostitution. In effect the Court said this was an attempt to impose a criminal offence under the guise of provincial authority to regulate streets.

[29] In **Rio Hotel Limited** v. **New Brunswick Liquor Licensing Board** [1987] 2 S.C.R. 59, the Supreme Court upheld the New Brunswick Liquor Licencing Board requirement that holders of liquor licences obtain an entertainment licence for all live entertainment and in imposing conditions to the licence that prohibited nude dancing and restricted live entertainment. The license conditions were challenged as infringing on the federal criminal law power. The Supreme Court of Canada upheld the legislation under the double aspect doctrine. Only where there was a direct conflict between the provisions of the provincial legislation and federal legislation would the provincial law be held inoperative under the paramountcy doctrine. Essentially, the Court noted, as in the securities legislation cases, that duplication, without direct conflict, does not make provincial legislation inoperative.

[30] On its face, the decision in **R.** v. **Morgentaler** [1993] 3 S.C.R. 463 might suggest limits on the provinces' power to regulate in respect of matters covered by federal criminal legislation. In this case, the Province of Nova Scotia purported to pass legislation prohibiting abortions anywhere other than an approved hospital. The trial court, Court of Appeal and the Supreme Court of Canada admitted extrinsic evidence to show that in reality the legislation was an attempt, for political purposes, to prevent Dr. Morgentaler from operating a private abortion clinic, that there was no socially relevant conduct that was the object of the legislation, that there was no public health policy or purpose in the legislation, and that it was a surreptitious attempt to effect the criminal law.

[31] In contrast, I am satisfied that the purpose of this legislation is to regulate the use of property so as to suppress uses that adversely affect the property of others or interferes with others' enjoyment of their property, and that its most important characteristic or dominant feature is not to supplement the criminal law.

[32] I note that any penalties arise only from breach of an Order; that is, the penal aspect of the legislation is solely for the purpose of enforcing the purpose of the legislation which is to regulate specified uses of property. I am satisfied that it is a proper exercise of provincial jurisdiction under Sections 92(13) and 92(15) of the *Constitution Act* of 1867.

Evidence

[33] On February 7th, Michael Cochrane appeared and stated that he, Laura and Mica Cochrane were all very sick with the flu. He handed papers to the Court, since have been marked

as exhibits, and considered for this decision. He stated that he was not in a condition to continue the hearing. I therefore adjourned the hearing to yesterday, to enable Mr. Cochrane and the other respondents the opportunity to participate. The Court notes that neither Laura Cochrane nor Mica Cochrane appeared on February 7th, the date originally scheduled for this hearing, nor at the adjourned hearing which commenced yesterday and ended today. They were all personally served with notice of this application on January 18th. This decision is based on the evidence received.

[34] The Director relies upon five affidavits from: the manager of the mobile home park, Kathryn Morse, who was cross-examined by Michael Cochrane; three police officers whose affidavits were admitted without cross-examination (although one officer was called and examined); and Mark McNeil, the chief investigator for the Director, who was cross-examined by Michael Cochrane.

[35] Michael Cochrane testified under oath and tendered five exhibits. Two were letters from a neighbour, Mr. Wallace, with regard to inquiries he made of neighbours subsequent to this application being made, based upon which it was suggested that only one of the senior citizens in the mobile home park had any complaints. Another contained an information sheet from "Mainline Needle Exchanges" about how needle exchanges operated; Michael Cochrane testified that he was a drug user who ran a needle exchange as a volunteer to prevent intravenous drug users from contracting diseases from used dirty syringes. Another document was a card that indicated that he was a helper with the "Mainline Needle Exchange Program". The last consisted of his written representations to the Court and included matters repeated in his oral evidence, both in direct and on cross-examination.

[36] It is not contested that the land at 42 Douglas Avenue, Berwick, Kings County, Nova Scotia is part of a mobile home park owned by the respondent, West Point Homes Limited, that the owner leased the lot to Laura Cochrane, and based on the affidavit of Mr. McNeil possibly to Mica Cochrane, the owner(s) of the mobile home situate on the land at 42 Douglas Avenue, and that the mobile home and lot were occupied by Michael Cochrane, Laura Cochrane and Mica Cochrane. Mr. McNeil's uncontradicted evidence is that on November 11th he attended at the property and spoke to Laura Cochrane who produced documents showing that the ownership of the mobile home was registered in her name and that of her son Mica Cochrane. In the *Act*, property means a building and the land on which it is located (section 2(1)(h)), and a building includes a mobile home (section 2(1)(a)).

[37] Michael Cochrane acknowledged the applicant's evidence that there are frequent visitors to 42 Douglas Street who entered the residence and stayed only a short time (3 to 5 minutes). He acknowledges that they are intravenous drug users and that "probably 80%" have intravenous drugs with them when they are there. He says that they visited only to exchange dirty syringes for new syringes (for which there is no charge), and that they do not get their drugs from the property. This evidence is consistent with the high volume of traffic reported to the Director and observed by the investigator on several surveillance stakeouts.

[38] If I accepted what Mr. Cochrane says about reason for the high traffic to his residence by drug users, there are many people driving to and from, and walking to and from, the property at 42 Douglas Avenue, which property, from the affidavits, photographs and aerial photographs, is clearly in the middle of a mobile home park - a residential area, as opposed to a commercial or industrial area, and within very close proximity to a nursery school, medical centre, and a recreation centre for young people.

[39] The affidavits of the RCMP officers and the investigator (Mark McNeil) refer to two searches of the property conducted by the RCMP pursuant to warrants issued under the Controlled Drugs and Substances Act on September 21st, 2007, and on October 25th, 2007. The searches have resulted in charges under the CDSA against the Cochranes, which charges are outstanding. The affidavits contain photographs of what was seen and seized by the police during the searches and the "exhibit reports" of the police as to what was found and seized. In addition to packages with thousands of new unused syringes, and containers of dirty used needles, the items seized in both searches included syringes containing liquid narcotics, torches, spoons and other paraphernalia to "cook" pills into liquid drugs (which Michael Cochrane said he did for his personal use), numerous prescription bottles with and without labels, marihuana, a small bottle of hash oil, score sheets, and related items.

[40] Mr. Cochrane suggested that evidence relating to Michael Harris, who was caught with three needles with liquid morphine exiting the property on the day of the second search, did not mean any more than that Harris attended his residence to exchange dirty needles for new syringes and that the morphine-filled syringes were brought by Harris with him when he came to exchange syringes. Michael Cochrane suggested that Harris had exchanged about thirty needles on that visit. While disagreeing with Mr. Anderson's suggestion on cross-examination that the Cochranes were trafficking several thousand needles with drugs each month, he did acknowledge that the number of new-for-used needles exchanged each month could be in accord with the numbers seized in the searches. Whether the respondents intended to create, by their needle exchange activity, a circumstance that would negatively affect the health, safety or security of their neighbours, in particular, the senior citizens (some living alone) and the families with young children or teenagers, the conduct of a needle exchange in the manner described by Michael Cochrane, has exposed the people living in the neighbourhood to substantial risks to their health, safety and security. Mr. Cochrane says that the visitors to his residence are intravenous drug users and that probably 80% have drugs on them during their visits. Having these persons in the neighbourhood - driving to and from the residence on a frequent basis at all hours of the day, creates a risk to the health, safety and security of anyone living, walking, or being on that street.

[41] Even if I accept what Mr. Cochrane says, a threat to the safety and security of the neighbourhood is created by the frequent presence of intravenous drug users exchanging needles. It is common sense that those people would become familiar with the area and its residents, become aware of their vulnerablities, and of opportunities to take advantage of them. It is common sense that if the visitors are serious users of illicit drugs and have drugs on them when

they visit the needle exchange, many could be under the influence of drugs at the time of the visits, and cause unintentional harm going to and from the property. It is likely that visitors to the Cochrane property would, from ignorance of its exact location or their condition or their state of mind, enter onto the neighbours' property at odd hours, instilling fear and concern for their safety and security. This was reported by the neighbours to the investigator to be so.

[42] Mr. Cochrane says to the Court that there is no evidence anyone has yet been hurt by the activity carried on at the property. One does and should not have to wait until someone has been subjected to harm, loss, or injury, to recognize or declare the risk.

[43] I find that a property in a residential neighbourhood, used for a needle exchange in the manner described in this case, has a negative or adverse effect upon the health, safety and security of persons in the neighbourhood.

[44] I am not as certain as Mr. Anderson that a "specified use", as defined in the *Act*, encompasses operating a needle exchange, even if that activity creates a risk to the safety or security of the neighbours, or that a residential neighbourhood is the wrong place for one.

[45] The definition in Section 2(1)(i)(ii) of the *Act* contains the words: "use of the property . . .for the possession, use, consumption, sale, transfer, exchange of a controlled substance . . . <u>in contravention of</u> [the *Controlled Substance and Drugs] Act*". It is not clear to me whether operation of a needle exchange is a use <u>in contravention of</u> the CDSA, even if I am satisfied that the use is in respect of the use and consumption of a controlled substance.

[46] I therefore must consider whether I was satisfied there was evidence upon which a reasonable inference exists that the property is being habitually used for the possession, use, consumption, sale, transfer or exchange of controlled substances.

[47] It appears from the literature tendered by Mr. Cochrane regarding needle exchanges that those who operate the needle exchanges under that program are not only sympathetic to the users, intending without remuneration to assist in preventing the spread of diseases associated with intravenous use of illicit drugs, but they are frequently, as Mr. Cochrane says he is, intravenous drug users. Does the activity that has been described in the evidence give rise to a reasonable inference that the property is being used for more than just a needle exchange?

[48] Source A information is not used or admissible in a criminal court to convict; it is only permitted to be part of the content in an "information to obtain" to get a search warrant. Evidence of what one or more unidentifed "Source A's" say to police officers may be enough, with such other evidence as satisfies the **Debot** criteria, to obtain a search warrant, but, in my view, it is not sufficient to give rise a reasonable inference that a property is being habitually used for a "specified use". As Justice McMurtry noted in **M(SM)**, the Court must carefully consider the quality of the evidence, given the serious consequences of making an Order. The burden of proof as to what gives rise to a reasonable inference is contextual. I know of no burden in any civil context that is not at least a burden of establishing the facts on a balance of

probabilities. The nature of the remedies in the Act are not dissimilar to those associated with an injunction, or equitable remedies in general. I apply that burden in this case.

[49] This Court cannot see how Source A information can be used to support or to buttress a request that the Court find a reasonable inference that there was, in this case, more than a needle exchange. I am not prepared to consider, and do not consider, anonymous Source A information to be evidence upon which this Court can grant an Order.

[50] However, the following evidence is, in my view, admissible and relevant evidence, and clearly, to a standard even higher than a balance of probabilities, satisfies the burden on the applicant to establish that the use of the property was for a "specified use".

[51] First is the evidence of Mark McNeil. In paragraph 7 of his affidavit he says that he received complaints from four individuals who had concerns about young teenagers being at 42 Douglas Drive, and that the neighbours were fearful for the teenagers' exposure to drugs, and for the disturbances, and trespassing associated with the drug-related activity at the property.

[52] We have the uncontradicted evidence that Michael Cochrane kept drugs at the property, that he produced liquid narcotics from pills, that he kept and used marijuana - a large bag of leaves (117 grams) was on his living room floor during one of the searches, and that, he, his wife and son had recently-filled prescriptions for Dilaudid - about 300 pills, all of which were gone.

[53] Mr. McNeil conducted surveillance for several hours at different times on different days, and observed several people drive up in vehicles, and stop at the property. Some knocked, and others just walked in without knocking. Most remained for three to five minutes.

[54] Mr. McNeil's affidavit contained photos and the "exhibit reports" from the two searches of the property. The nature, quantity and location of the paraphernalia and drugs on the property are not consistent with simply a "needle exchange".

[55] Photographs and the exhibit report from the search of September 21st document the equipment, torches, spoons and other drug paraphernalia, used to reduce pills to liquid narcotics, together with more than 3000 syringes, including some syringes that actually had liquid narcotic in them, the marijuana in the living room, the glass vial containing hash oil, and the many pill bottles.

[56] Photographs and the exhibit report from the search conducted on October 25th showed thousands of syringes, two of which had liquid narcotics in them, torches, spoons and other drug paraphernalia in bedrooms and the living room, and "score sheets".

[57] Corporal Buglar's affidavit (on which he was not cross-examined) shows that the police search of September 21st uncovered five loaded syringes with liquid narcotics in the master bedroom; a chest with loaded and packaged syringes in the living room; multiple pill bottles, some with empty, some with pills; multiple number of packaged syringes; 117 grams of

marijuana; a glass vial with hash oil; and drug paraphernalia. In respect of the October 25th search, they recovered two loaded syringes with morphine; ledgers with names and accounts; 2,500 packaged syringes; several empty pill bottles; and, again, drug paraphernalia.

[58] The affidavit and oral evidence of Constable Lynch, who was in charge of the October 25th search, referred to the arrest of Michael Harris as he was leaving the residence. He left the property a short time after entering and at that time had three syringes full of what turned out to be morphine. Sometimes circumstantial evidence speaks louder than words. Found in the property was a score sheet showing that Harris owed owed money - $80.00 I believe - to Mr. Cochrane. Mr. Cochrane's explanation was that Mr. Cochrane had advanced money to Mr. Harris for supplies for Cochrane's camp, which Harris had not supplied; the score sheet was a record of that debt, not a drug debt. Recognizing that I must be cautious when using the demeanor of a witness to assess credibility, Mr. Cochrane's explanation of the debt, in the totality of the circumstances, was not credible. I did not believe him. Nor do I believe his explanation that the drug paraphernalia (torches, spoons, and filled syringes) were solely for his personal use.

[59] The affidavit of Constable Mulloy did not contain evidence that was helpful to the Applicant.

[60] The affidavit and evidence (on cross-examination) of Ms. Morse, the manager of the mobile home park owner, one of the respondents, confirmed numerous complaints of the activities to which Mr. Cochrane partially admits, but for which he gives an innocent explanation.

[61] The cover used by Mr. Cochrane for carrying on a drug trafficking business is as good as it gets. If it was not for the nature and location of the other drug paraphernalia and the quantity of various drugs; if it was not for Michael Harris; and if this was the criminal court where the standard of proof is proof beyond a reasonable doubt, it is possible that I might not have concluded that, based solely on the number of new and dirty needles on the property and the great number of drug users making frequent short visits to the residence at all hours of the day, the property was being used for a "specified use".

[62] Based on the burden of proof, determined in the context of the purpose of the *Act* and the consequences on the affected parties - which consequences do not include incarceration, or a fine, but only that the property must cease to be used in a manner that adversely affects the neighbourhood, which is, in this case, a <u>significant</u> adverse affect on the neighbourhood - I am satisfied that the activity gives rise to a reasonable inference that the property, as reported by the neighbours to the investigator to be the case, was being used in contravention of the *Controlled Drugs and Substances Act* in relation specifically to "the possession, use, consumption, sale, transfer or exchange of controlled drugs".

[63] In other words, I am satisfied that the property was used for more than a needle exchange. The burden of proof for today's hearing is not the burden required for a criminal

conviction. The consequences to the affected persons in this proceeding differs from that in a criminal proceeding.

[64] Finally, I find that at the time this application was made, the use of the property had been habitual. Two recent searches of the property a month apart produced similar results. There is evidence from Ms. Morse that the activity has been a long term problem for the neighbourhood.

Remedy

[65] As mandatory provisions of the Order, I grant an Order that provides as follows: The property is the land of West Point Homes Limited, and the building, that is, mobile home of Laura and Mica Cochrane, occupied by Michael, Laura, and Mica Cochrane situate at 42 Douglas Avenue, Berwick, Nova Scotia. The specifies use of the property is 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*. I enjoin all persons from causing, contributing to, permitting or acquiescing in the activities, beginning on the day after they are served with the Order and continuing until the Order ceases to be in effect. The persons in this case are the Respondents, West Point Homes Limited, Michael Cochrane, Laura Cochrane and Mica Cochrane. I require the respondents to do everything reasonably possible to prevent the activities from continuing or reoccurring.

[66] As permissive provisions requested by the Applicant, I order as follows: I terminate immediately the tenancy agreement or lease in respect of the property. Ms. Morse's evidence is that the land owner gave a notice to the tenants to quit in November 2007 and, when the Cochranes failed to vacate, applied in December 2007for help from the Residential Tenancy Board. There was no evidence on the present status of that proceeding.

[67] The Director asks that this Court require any and all persons to vacate the property on or before a date specified by the Court and enjoin all persons from re-entering or re-occupying it. I am prepared to make such an Order but I am not prepared to make it effective today. This is a civil proceeding, whose purpose is to protect the health, safety or security of persons in the neighbourhood. It is not intended to be punitive. My sense is that, because of the outstanding proceedings in criminal court, the Cochranes will tread very carefully. I am prepared to fix a date for them to vacate the land that is to some degree affected by the season. I fix March 31st, 2008 as the date by which either the mobile home is moved or the property is vacated by all persons. In other words, it shall be vacated and no one shall re-enter or re-occupy it after March 31st, 2008 . I enjoin any and all persons from re-entering or re-occupying it after that date for ninety (90) days.

Mr. Cochrane: What about if I can get the money after March 31st to move the trailer?
Justice Warner: Then you're going to have to come back to Court or make an arrangement with the Director.
Mr. Cochrane: Okay
Justice Warner: There is provision in the Act permitting the Court to vary the Order.

[68] Finally, the Director asks for authorization to close the property from use and occupation on a certain date and keep it closed for up to ninety (90) days. I order that, if the mobile home is not moved from 42 Douglas Avenue on or before March 31st, 2008, or if it is still not vacated by that date, then I require the Director to close the property from use and occupation, and to keep it closed for 90 days.

[69] Because it is new legislation I am not too sure all of the implications of "closing" but I presume that it means securing it and preventing entry.

[70] In effect, I am giving Mr. Cochrane about five or six weeks to leave the neighbourhood where I believe people are afraid for good reason; the fact that they are afraid is probably the reason they are afraid to tell Mr. Cochrane or his friend of their fears.

[71] This legislation is appropriately concerned with the safety of neighbourhoods.

[72] The final matter is the issue of costs sought by the Director. For no other reason than this is the first time this legislation has, to my knowledge, progressed this far, because this is novel legislation, it should not result in costs of the hearing against any of the respondents.

[73] I am not saying I would not order costs in future if the Director showed what efforts he had made to resolve matters without going to Court. I would rather Mr. Cochrane spend his money trying to get out of the neighbourhood, quite candidly, and it is clear he does not have many resources. This is a civil application intended to solve a civil property problem ; it is not a criminal proceeding to punish; it is on that basis that I found the legislation to be valid.

Results

[74] In Summary:

a) The legislation, pith and substance, is in respect to the use of property and therefore valid provincial legislation under Section 92(13) of the *Constitution Act*, 1867.

b) The burden of "giving rise to a reasonable inference" that the specified use is occurring, requires, in the context of this legislation and civil proceedings, proof on a balance of probabilities.

c) The evidence received by Affidavit (subjected to cross-examination) and *viva voce* establishes on a balance of probabilities that the "specified use" occurred and had an adverse effect on the safety and security of the neighbourhood.

d) An Order enjoining continuance of the specified activity is issued. The Order also requires the Director to close the property for 90 days if the mobile home is not moved or vacated by March 31st, 2008. No costs are ordered.

[75] When giving the oral decision, I reserved the opportunity, if a written version became necessary, to edit the decision for grammar and to make it more readable, without changing any of the findings of fact or law, analysis, or conclusions. It has been edited for that purpose and to delete the interjections that were made during the delivery of the decision.

J.