

Date: 20020528  
Docket: CAC 174119

**NOVA SCOTIA COURT OF APPEAL**  
[Cite as: **R. v. Briand, 2002 NSCA 74**]

**Roscoe, Bateman and Hamilton, J.J.A.**

**BETWEEN:**

TROY CHRISTOPHER BRIAND

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

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REASONS FOR JUDGMENT

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Counsel: Appellant in person  
Laurel Halfpenny-MacQuarrie for the respondent

Appeal Heard: May 22, 2002

Judgment Delivered: May 28, 2002

THE COURT: Leave to appeal sentence granted and appeal dismissed per reasons for judgment of Bateman, J.A.; Roscoe and Hamilton, J.J.A. concurring.

**BATEMAN, J.A.:**

[1] Troy Briand appeals his conviction on a charge of criminal harassment (s. 264 of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46).

[2] The object of Mr. Briand's harassment was Crown Attorney Paul Bychok. Mr. Briand alleges that he was abused by Cesar Lalo, a former youth probation officer. He is one of many alleged victims in relation to which Mr. Lalo has been criminally charged. Mr. Bychok was one of the attorneys responsible for prosecuting all "Lalo charges". As was his duty as a Crown Attorney responsible for the Lalo prosecution, Mr. Bychok was required to assess each allegation and determine whether there was a reasonable likelihood of conviction. Mr. Bychok and his co-counsel interviewed Mr. Briand in 1998. They determined not to proceed with the charge against Mr. Lalo in relation to the alleged abuse of Mr. Briand, concluding that Mr. Briand's recollection of the relevant events was not sufficiently clear or detailed to sustain a case. Mr. Briand did not agree with this decision.

[3] This charge and conviction flow from his persistent and vigorous attempts, to have contact with Mr. Bychok after the Crown had made the decision not to prosecute Mr. Lalo in relation to Mr. Briand's allegations. Mr. Briand was seeking a fuller explanation as to why the Crown had decided not to proceed. The explanation offered by the Crown both verbally and in writing did not satisfy Mr. Briand's concerns.

[4] Mr. Briand was ably represented by counsel at trial. He appeared on his own behalf on this appeal.

[5] Mr. Briand is currently involved in several legal proceedings, which he feels are not of his making. He is overwhelmed by the number of legal matters with which he must contend and feels disadvantaged in that he does not have the financial resources to retain counsel and has been denied Legal Aid. He feels that his quest for information and his involvement in the various proceedings subjects him to unfair stereotyping as a difficult person who is in conflict with the law. Mr. Briand submits that he has moved beyond his criminal past and has been free of legal difficulties for several years now. He feels that he is becoming a productive member of society and plans to continue on that path. Although Mr. Briand has several appeals pending before this Court, his request that the matters be combined cannot be granted. It is beyond our power in this proceeding to consolidate the

various appeals to this Court. Each arises from a different proceeding in the lower courts. Some are civil and others are criminal matters. The **Rules** require that each be dealt with separately. Nor is it possible for us to order an inquiry into the investigation and prosecution of the charges against Mr. Lalo.

[6] It is not for this Court to consider whether Mr. Bychok was right or wrong in his decision not to proceed with Mr. Briand's allegations against Mr. Lalo. The Crown's decision in that regard is not subject to our review. (See, for example, **R. v. Power**, [1994] 1 S.C.R. 601; S.C.J. No. 29 (Q.L.); **R. v. T. (V.)**, [1992] 1 S.C.R. 749; S.C.J. No. 29 (Q.L.) and **R. v. Cook**, [1997] 1 S.C.R. 1113; S.C.J. No. 22 (Q.L.)). We are limited to considering only the appeal from the charges against Mr. Briand stemming from his pursuit of contact with Mr. Bychok. Nor can we order the disclosure of the additional information which Mr. Briand seeks. It is his view that steps have been taken by the police and prosecutors to change the personnel associated with the Lalo prosecution so as to avoid answering Mr. Briand's questions. In this regard he asks that we make appropriate inquiries. It is not our function to do so nor is it within our jurisdiction.

[7] It is Mr. Briand's submission that he was denied an impartial hearing of these charges. While his submission in this regard is general, it seems to be his complaint that the prosecutor, the witnesses and the judge were all familiar with one another, and that this worked to his disadvantage. The victim of the alleged harassment was a Crown prosecutor and the allegations involved contact with staff at his places of work. It follows from those circumstances that the persons involved in this trial would be known to one another. That alone does not lead inevitably to the conclusion that the process was flawed. There is nothing in the record which would lead us to conclude that the trial was other than a fair and impartial one.

[8] In relation to conviction, Mr. Briand takes the position that the verdict is unreasonable or cannot be supported by the evidence. Mr. Briand says that his conduct was innocent in that he was on a genuine quest to obtain information which would assist him in understanding why the Crown chose not to pursue his complaint against Mr. Lalo. He feels that Mr. Bychok and others overreacted to his inquiries. I have reviewed the evidence and the law relevant to a charge of criminal harassment. I am satisfied that at trial the Crown proved the essential elements of the offence. In particular, even if one accepts Mr. Briand's submission that his actions were not intended to harass Mr. Bychok, at a minimum, the

evidence supports the judge's finding that he was willfully blind or reckless as to the effect of his conduct. In short, the verdict is a reasonable one and supported by the evidence.

[9] Mr. Briand was sentenced to two months incarceration followed by a two year probationary period and a firearms prohibition, having been given credit on a two for one basis for two months spent on remand. Taking into account the circumstances of this offence and Mr. Briand's lengthy, although largely unrelated record, we are not persuaded that the judge erred in principle in imposing this sentence, nor that the sentence is manifestly excessive. Leave to appeal sentence is granted but the appeal is dismissed.

[10] Accordingly, I would dismiss the appeal.

Bateman, J.A.

Concurred in:

Roscoe, J.A.

Hamilton, J.A.