

Date: 20020523
Docket: CAC 179671

NOVA SCOTIA COURT OF APPEAL
[Cite as: *R. v. Black* 2002 NSCA 72]

BETWEEN:

FREDERICK WILLIAM LOGAN BLACK

Applicant

- and -

HER MAJESTY THE QUEEN, her servants
the Royal Canadian Mounted Police and the
Superintendent of Bankruptcy

Respondents

DECISION

Counsel: Applicant in person
Dana Giovannetti, Q.C. for the respondents

Application Heard: May 16, 2002

Decision Delivered: May 23, 2002

BEFORE THE HONOURABLE JUSTICE FLINN, IN CHAMBERS

FLINN, J.A. (In Chambers):

- [1] The applicant, Mr. Black is presently before the Supreme Court of Nova Scotia charged with three counts of fraud contrary to s. 380(1)(a) of the *Criminal Code*. He elected trial before a Supreme Court judge without a jury. The matter is being heard by Justice Murphy of the Supreme Court.
- [2] In his affidavit in support of the application, Mr. Black deposes to the dismissal by Justice Murphy of various pre-trial *Charter* applications which Mr. Black had made. The details of those applications are not before me. Mr. Black advised me that he subsequently made an application before Justice Murphy requesting an order that Justice Murphy recuse himself from presiding over the trial on the basis of alleged bias. Mr. Black advised me that Justice Murphy refused that application. The material in support of that application and the decision of Justice Murphy are not before me.
- [3] In his application before me, Mr. Black seeks an order as follows:
- (a) . . . 1) disqualifying the trial justice John D. Murphy, or in the alternative
2) allowing the accused to re-elect trial by judge and jury;
 - (b) If the trial is to proceed on the dismissal of an application to quash the **‘information’** and **‘summons’**, an Order granting a change of venue to the province of residence of the accused, notwithstanding the *CC*, s. 599, and in reliance on *Ss. 6, 7, 15 & 24 of the Charter of Rights and Freedoms*;
 - (c) An Order granting fixed costs to the Applicant;
 - (d) Such further and other relief as the Applicant advises and as this Honourable Court seems just in the circumstances.
- [4] After hearing Mr. Black and counsel for the Crown I summarily dismissed Mr. Black’s application.
- [5] Mr. Black has filed a notice of appeal from my dismissal of his application and has asked me to provide reasons in support of my judgment dismissing his application.
- [6] In my view the record is clear as to why I dismissed Mr. Black’s application. However, since Mr. Black is a self-represented litigant I will provide these supplementary reasons which can be read along with the record of the hearing.

- [7] In essence, I dismissed Mr. Black's application because in my opinion, and, although given the opportunity, Mr. Black could not provide any authority to the contrary:
- (a) as a judge of the Court of Appeal, I have no jurisdiction to grant the order which Mr. Black requests; and
 - (b) the Court of Appeal has no jurisdiction to grant the order which Mr. Black requests.
- [8] The limited jurisdiction of a judge of the Nova Scotia Court of Appeal, sitting in chambers, is reviewed in some length by Justice Hallett in *Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)* (1996), 154 N.S.R. (2d) 358. That limited jurisdiction does not include jurisdiction to grant the relief requested by Mr. Black. Further I know of no authority, nor could Mr. Black direct me to any authority, which contemplates an application for an order of prohibition originating in the Court of Appeal. The Nova Scotia Court of Appeal is a statutory court and derives its appellate jurisdiction by statute. It is not a court of original jurisdiction. The law is clear that Mr. Black cannot launch an interlocutory appeal of a matter involving an indictable offence. That is, in effect, what he is attempting to do by this application.
- [9] Mr. Black's application is therefore dismissed.

Flinn, J.A.