

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Watt*, 2008 NSCA 25

Date: 20080328

Docket: CAC 278013

Registry: Halifax

Between:

Her Majesty The Queen

Appellant

v.

Roderick Samuel Watt

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: February 7, 2008

Subject: *Stay of proceedings - Disclosure*

Summary: The trial of the respondent on a charge of break and enter into a dwelling house committing the indictable offence of assault causing bodily harm was adjourned just before its commencement, as a result of late disclosure and non-disclosure by the Crown, which the parties and the judge scheduled to hear the trial agreed could be significant. At the adjournment hearing on April 18, 2006, the Crown stated that the complainant had consented to the release of insurance information, which the Crown thought would obviate the necessity of a third party records application. The trial was adjourned to December 2006. The material sought to be disclosed was not provided until seven days before the second scheduled commencement of the trial of the respondent. The judge who heard his application for a stay was satisfied that the Crown's failure to make timely disclosure impaired the right of the respondent to make full answer and defence, and constituted an abuse of process. He determined that this was one of those "clearest of cases" and granted the stay of proceedings.

Issue: Whether, in the circumstances before him, the judge erred in ordering a stay of proceedings.

Result: The stay of proceedings was set aside. The parties agreed that, at the adjournment hearing, what the Crown stated did not amount to an undertaking, but was a commitment to help the respondent obtain the remaining insurance material. The respondent also conceded that the Crown had not acted with *mala fides*. There was no evidence that the RCMP had the material sought to be disclosed before the complainant signed the consent authorizing the insurer to release it, nor of any refusal by the RCMP or the Crown Attorney to release it once received.

In determining whether to grant a stay, the judge misdirected himself by failing to consider all aspects of the analysis set out in *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391. There was no evidentiary basis for the judge's statement that the Crown reneged on an agreement made and presented to the court, which resulted in an abuse of process. He failed to consider the respondent's obligation of due diligence in pursuing disclosure, and focussed on the Crown's past conduct rather than on how the delay in disclosure would manifest, perpetrate or aggravate damage by any future proceeding. His reasons did not analyze whether the potential prejudice identified was of such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence, nor did they include any substantial inquiry as to appropriate remedies other than a stay. The judge also erred by failing to balance the interests served by the granting of a stay against the societal interests of having a serious criminal charge decided at trial.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 24 pages.