

Docket No.: CA 162037; 162081
Date: 20000804

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Wilson Fuel Company, 2000 NSCA 89]

Freeman, Roscoe, Flinn, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

WILSON FUEL COMPANY LIMITED

Respondent

HER MAJESTY THE QUEEN

Appellant

- and -

ALLAN DANIEL MACASKILL

Respondent

REASONS FOR JUDGMENT

Counsel: James C. Martin, for the appellant
David G. Barrett for the respondent, MacAskill
Dale Dunlop and Susan Wheeler, for the respondent
Wilson Fuels

Revised Decision: The text of the original judgment has been corrected
incorporating the text of the erratum (date unknown).

Appeal Heard: June 9, 2000

Judgment Delivered: August 4, 2000

THE COURT: The appeal is allowed as per reasons for judgment of Flinn, J.A.; Freeman and Roscoe, JJ.A. concurring.

FLINN, J.A.:

[1] The respondent, Wilson Fuel Company Limited, is a body corporate which carries on business in Nova Scotia. The respondent, Allan Daniel MacAskill, resides in the Province of Nova Scotia.

[2] The respondents were charged with various offences under the **Weights and Measures Act**, R.S.C. 1985 c. W-6 (the **Act**) and the **Regulations** made under that **Act** (the **Regulations**).

[3] Wilson Fuel Company Limited, was charged with 194 counts relating to fuel dispensers located at 32 different locations, 7 in New Brunswick (15 counts) and 25 in Nova Scotia (179 counts). The 194 counts consist of three distinct contraventions under the **Act** and **Regulations** and are divided as follows:

- (a) 149 counts of violating s. 24(b) of the **Act**; that Wilson Fuel Company Limited had, in use for trade, fuel dispensers which were not dispensing fuel within the required limits of error as set out in the **Regulations**; and
- (b) 21 counts of violating s. 35.1 of the **Regulations**; that Wilson Fuel Company Limited, when adjusting the fuel dispensers, failed to adjust the measurement of error in the fuel dispensers to as close

to zero as possible; and

- (c) 24 counts of violating s. 68(1) of the **Regulations**; that Wilson Fuel Company Limited, when adjusting the gas dispensers, set the measurement of the fuel dispenser to measure an amount that was to the benefit of Wilson Fuel Company Limited and to the detriment of individuals purchasing gasoline and thereby failed to eliminate the means of perpetuating fraud when in use.

[4] Allan Daniel MacAskill was charged with 27 counts on a separate information relating to fuel dispensers located at 21 different locations, 5 in New Brunswick (9 counts) and 16 in Nova Scotia (18 counts). The 27 counts consist of two distinct contraventions under the **Act** and **Regulations** and are divided as follows:

- (a) 21 counts of violating s. 35.1 of the **Regulations** by failing to ensure that the dispensing devices were calibrated after adjustment so that the measurement error was as close to zero as possible; and
- (b) 6 counts of violating s. 41(1) of the **Regulations** for failing to report the adjustment.

[5] This appeal relates, solely, to the offences against both respondents which

were alleged to have been committed at various locations in the Province of New Brunswick. The only issue in this appeal is whether Provincial Court Judge Michael Sherar erred in law by deciding that, as a judge of the Provincial Court of Nova Scotia, he had no jurisdiction to try the respondents for the offences which were allegedly committed entirely within the Province of New Brunswick.

[6] This is a summary appeal on a question of law, under s. 830 of the **Criminal Code**, R.S.C. 1985, c. C-46, and may be made directly to this court, a superior court of criminal jurisdiction as defined in s. 2 of the **Criminal Code**.

[7] At issue in this appeal is the interpretation of s. 37(2) of the **Act** which provides as follows:

A complaint or information in respect of an offence under this Act may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

[8] The trial judge, in his decision, concluded as follows:

This Court concludes that s.37(2) of the **Weights and Measures Act** intends only to confer jurisdiction upon a summary conviction court within a Province **over incidents arising throughout that Province as long as the accused is resident or carrying on business somewhere within the territorial jurisdiction of that Court** i.e. whether the whole of the Province as in Nova Scotia or a subset or division of that Province. (emphasis added)

[9] And further:

It is the decision of this Court that Parliament did not specifically turn its collective

mind to considering the extra-provincial jurisdiction of provincially constituted courts when it enacted s. 37(2) of the **Weights and Measures Act** as presently constituted.

[10] And further:

It is the opinion of this Court that the more restrictive interpretation of s. 37(2) of the **Act** is consistent with the plain reading of the section and is **more in keeping with the respective division of powers between Parliament and the Provincial legislative authority.** (emphasis added)

[11] With respect, there was no need for the trial judge to be concerned about “the respective division of powers between Parliament and the Provincial legislative authority.”

[12] This concern of the trial judge arose because the respondents took the position (which they have repeated on this appeal) that to give s. 37(2) of the **Act** the interpretation which the Crown advances (i.e., that the Provincial Court of Nova Scotia has jurisdiction to try the offences in question even though they were committed in New Brunswick) would make s. 37(2) of the **Act** *ultra vires* the Parliament of Canada, because it would purport to extend the territorial jurisdiction of the Provincial Court of Nova Scotia, a matter entirely within provincial competence.

[13] That position, in my opinion, has no merit.

[14] A similar argument was advanced, and dealt with, by the New Brunswick Court

of Appeal in the case of **Re The Queen and Smith** (1974), 16 C.C.C. (2d) p. 11. In this case the court was considering s. 244(3) of the **Income Tax Act**, R.S.C. 1970-71-72, c. 63 which provides as follows:

244(3) An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court, judge or justice if the accused is resident, carrying on business, found or apprehended or is in custody within its or his territorial jurisdiction although the matter of the information or complaint did not arise within its or his territorial jurisdiction.

[15] This section is strikingly similar to s. 37(2) of the **Weights and Measures Act**.

[16] Writing on behalf of the court, Chief Justice Hughes said the following at p. 22-23:

. . . Counsel for the defendant urged that it is *ultra vires* Parliament because it purports to extend the territorial jurisdiction of a provincially constituted Court, a matter which falls solely within provincial competence under s. 92(14) of the *British North America Act, 1867*. In my opinion, in enacting s. 244(3) Parliament did not in any way encroach upon provincial legislative authority but in the exercise of its jurisdiction over procedure in criminal matters conferred on police magistrates a jurisdiction with respect to substantive offences under the *Income Tax Act* over which such magistrates had general jurisdiction, provided the accused "is resident, carrying on business, found or apprehended or is in custody within its or his territorial jurisdiction".

The offences with which the defendant was charged are summary conviction offences and Parliament has clear authority to vest in any Court of criminal jurisdiction whether constituted under federal law or a provincial statute power to hear and determine such cases. In *Re Vancini* (1904), 34 S.C.R. 621, Sedgewick, J., who delivered the judgment of the Court, quoted with approval the following passage from *Lefroy on Legislative Powers in Canada* [at p. 626]:

" . . . the Dominion Parliament can, in matters within its sphere, impose duties upon any subjects of the Dominion, whether they be officials of provincial courts, other officials, or private citizens; and there is nothing in the *British North America Act* to raise a doubt about the power of the Dominion Parliament to impose new duties upon the existing provincial courts, or to give them new powers, as to matters which do not come within the

subjects assigned exclusively to the legislatures of the provinces, or to deprive them of jurisdiction over such matters. (Lefroy on Legislative Powers in Canada, page 510.)”

And at p. 626 said:

This statement of the law is mainly founded upon the celebrated decision of this court in *Valin v. Langlois*, 3 Can. S.C.R. 1, where it was held that the Dominion Controverted Elections Act (1874) was not *ultra vires* of the Dominion Parliament, and whether or not the Act established a Dominion court, the Dominion Parliament had a perfect right to give to the courts of the respective provinces and the judges thereof the power thereby created, and did not, in utilizing judicial officers and establishing courts to discharge the duties assigned to them by that Act, in any particular invade the rights of the local legislatures . . .

And at p. 627:

Where once the Parliament of Canada has given jurisdiction to a provincial court whether superior or inferior, or to a judicial officer, to perform judicial functions in the adjudicating of matters over which the Parliament of Canada has exclusive jurisdiction, no provincial legislation, in our opinion, is necessary in order to enable effect to be given to such parliamentary enactments.

Whether or not provincial legislation is required, s. 8(1) of the *Provincial Court Act* confers upon the Judges of the Provincial Court jurisdiction to exercise all criminal and *quasi*-criminal jurisdiction which Parliament may vest in a police magistrate under the provisions of the *Criminal Code* or other federal enactment.

[17] The present Nova Scotia legislation goes even farther than did the New Brunswick **Provincial Court Act** in 1973. Section 7 of the **Provincial Court Act**, R.S.N.S. 1989, c. 238 defines the jurisdiction of Nova Scotia Provincial Court Judges and states:

Each judge shall

(a) **have jurisdiction throughout the Province;**

(b) **have and exercise all the powers and perform all the duties conferred or imposed upon a judge by or under any Act of the Legislature or of the Parliament of Canada;**

(c) have and exercise the jurisdiction conferred upon a magistrate by Part XIX of the **Criminal Code (Canada)**;

(d) have and exercise all the power, jurisdiction and authority

(i) that immediately before the first day of April, 1976, was vested by or under any Act of the Legislature in a magistrate or stipendiary magistrate, and

(ii) of one or two more justices of the peace;

(e) have and exercise all the powers and perform all the duties conferred or imposed upon a magistrate, stipendiary magistrate or by one or more justices of the peace under any Act of the Parliament of Canada;

(f) be *ex officio* a justice of the peace and a commissioner for taking affidavits.
(emphasis added)

[18] I conclude, as the New Brunswick Court of Appeal concluded in **Re The Queen and Smith** with respect to offences under the **Income Tax Act**, that the conferring of jurisdiction on a Provincial Court Judge to hear and determine informations or complaints in respect to offences under the **Weights and Measures Act**, in the circumstances specified in s. 37(2) of that **Act** (which jurisdiction has been accepted by the Province of Nova Scotia under s. 7(b) of the **Provincial Court Act**) is, in my opinion, a constitutional provision which does not in any way encroach upon the jurisdiction of the Provincial Legislature to constitute courts of criminal jurisdiction under s. 94(14) of the **British North America Act**, 1867.

[19] In the case of **R. v. Graham** (1997), 121 C.C.C. (3d) 76 Justice Vickers of the British Columbia Supreme Court, acting in the capacity of a summary conviction appeal

court judge, dealt with a similar case, and applied the reasoning of Chief Justice Hughes in **Re The Queen and Smith**. He determined that a Provincial Court Judge made no error when he concluded that he had jurisdiction to proceed to hear offences under s. 244(3) of the federal **Income Tax Act** which offences, although committed in the Province of Ontario, were committed by a resident of the Province of British Columbia.

[20] Counsel for the respondents urge this court to conclude that the **Graham** case is wrongly decided because, in counsel's submission, it "fails to consider the basic sections of the **Criminal Code** prohibiting trial of offences that occurred entirely in another province."

[21] I will summarize counsel's submission as follows: The common law principle respecting territorial jurisdiction is that criminal law is local, and jurisdiction over an offence can only be conferred where the offence was committed within the territorial area over which a particular court has authority. That common law principle has been embodied in s. 478(1) of the **Criminal Code** which provides as follows:

Subject to this Act, a court in a Province shall not try an offence committed entirely in another Province.

[22] The fallacy with the respondents' submission is that s. 478.1 of the **Criminal Code** has no application to the trial of the offences which are the subject of this appeal.

The provisions of the **Criminal Code** (a federal statute) do not, automatically, apply to federal regulatory offences such as the offences which are the subject of this appeal.

The provisions of the **Criminal Code**, if they do apply, only apply by virtue of s. 34(2) of the federal **Interpretation Act**, R.S.C. 1985 c. 1. That section provides as follows:

All the provisions of the **Criminal Code** relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that **Code** relating to summary conviction offences apply to all other offences created by an enactment, **except to the extent that the enactment otherwise provides.**
(emphasis added)

[23] The Parliament of Canada has decided that the provisions of the **Criminal Code** apply to offences created by an enactment (such as those created by the **Weights and Measures Act**) except to the extent that the **Weights and Measures Act** otherwise provides. I repeat here, the provisions of s. 37(2) of the **Weights and Measures Act**:

A complaint or information in respect of an offence under this Act may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

[24] It is clear that s. 37(2) of the **Weights and Measures Act** does “otherwise provide” a court with jurisdiction over an offence - if the accused is resident or carrying on business within the territorial jurisdiction of that court - even if the matter or the complaint did not arise in that territorial jurisdiction.

[25] I note, here, that there are numerous federal statutes, creating federal regulatory offences, which have provisions similar to s. 37(2) of the **Weights and**

Measures Act. Examples are **Canada Grain Act**, R.S.C. 1985 c. G-10, s. 110(2), **Canada Labour Code**, R.S.C. 1985 c. L-2, s. 150, **Canada-Newfoundland Atlantic Accord Implementation Act**, S.C. 1987 c. 3, s. 201, **Canada Oil and Gas Operations Act**, R.S.C. 1985 c. O-7, s. 70, **Canada Water Act**, R.S.C. 1985 c. C-11, s. 35, **Canada-Nova Scotia Offshore Petroleum Resources Act**, S.C. 1988 c. 28, s. 206, **Consumer Packaging and Labelling Act**, R.S.C. 1985 c. C-38, s. 21(3), **Employment Insurance Act**, S.C. 1996 c. 23, ss. 102(3), s. 125(3), **Excise Tax Act**, R.S.C. 1985 c. E-15, s. 332(3), **Explosives Act**, R.S.C. 1985 c. E-17, s. 23.1, **Feeds Act**, R.S.C. 1985 c. F-9, s. 12, **Fertilizers Act**, R.S.C. 1985 c. F-10, s. 13, **Fishing and Recreational Harbours Act**, R.S.C. 1985 c. F-24, s. 22, **Freshwater Fish Marketing Act**, R.S.C. 1985 c. F-13, s. 31, **Hazardous Products Act**, R.S.C. 1985 c. H-3, s. 31, **Pest Control Products Act**, R.S.C. 1985 c. P-9, s. 13, **Pesticide Residue Compensation Act**, R.S.C. 1985 c. P-10, s. 13, **Proceeds of Crime (Money Laundering) Act**, S.C. 1991 c. 26, s. 9, **Radiation Emitting Devices Act**, R.S.C. 1985 c. R-1, s. 15(2), **Railway Safety Act**, R.S.C. 1985 c. 32 (4th Supp.), s. 41(3.1), **Seeds Act**, R.S.C. 1985 c. S-8, s. 12, **Textile Labelling Act**, R.S.C. 1985 c. T-10, s. 13(3), **Transportation of Dangerous Goods Act, 1992**, S.C. 1992 c. 34, s. 37.

[26] There is one further point. The words “territorial jurisdiction” in s. 37(2) of the **Weights and Measures Act** are not defined. The trial judge put, what he termed, a “more restrictive interpretation” on those words, and concluded that territorial jurisdiction

refers only to locations within the Province of Nova Scotia.

[27] While there are, for practical purposes, various judicial districts in the Province of Nova Scotia, in which the Provincial Court hears cases, the provisions of the **Provincial Court Act** make it clear that all Provincial Court Judges have jurisdiction throughout the Province, and their jurisdiction is not limited to any particular district or territory within the Province. There is only one territorial jurisdiction and that is the Province of Nova Scotia.

[28] Therefore, the words “territorial jurisdiction” in s. 37(2) of the **Weights and Measures Act**, refer, in the circumstances of this case, to the Province of Nova Scotia. As a result, when s. 37(2) of the **Weights and Measures Act** states “although the matter of the complaint or information did not arise in that territorial jurisdiction” it means, in this case, that the matter of the complaint or information did not arise in Nova Scotia. The trial judge erred in deciding otherwise.

[29] The respondents also rely on the case of **R. v. Frankich**, [1987] O.J. No. 1956. In this case the accused was charged, in Ontario, with having committed, in British Columbia a number of offences contrary to the **Unemployment Insurance Act**, R.S.C. 1970-71-72 ch. 48. Section 111(3) of the **Unemployment Insurance Act** is similar to s. 37(2) of the **Weights and Measures Act**. It provides as follows:

An information or complaint in respect of an offence under any Part other than Part IV may be heard, tried or determined by any magistrate as defined in the Criminal Code if the accused is resident, carrying on business, found or apprehended or is in custody within his territorial jurisdiction although the matter of the information or

complaint did not arise within his territorial jurisdiction.

[30] A Provincial Court Judge decided that s. 111(3) of the **Unemployment Insurance Act** does not, nor was it intended to, extend jurisdiction outside the limits of the Province.

[31] **Frankich** was considered in the **Graham** case. Both the trial judge and the summary conviction appeal court judge, in **Graham**, refused to follow **Frankich** because in their respective views it was wrongly decided. I agree.

[32] In summary, notwithstanding the common law principles respecting territorial jurisdiction, which are embodied in s. 478(1) of the **Criminal Code**, in its legislation with respect to federal regulatory offences, the Parliament of Canada has provided a different set of rules, which the Province of Nova Scotia has accepted. Therefore, since the individual respondent is resident within the Province of Nova Scotia, and the corporate respondent carries on business within the Province of Nova Scotia a Provincial Court Judge in Nova Scotia has authority to try the subject offences under the **Weights and Measures Act**, notwithstanding that those offences were committed in the Province of New Brunswick.

[33] I also note, here, that the respondents adduced no evidence, nor made any submission, either here or in the court below, that the trial of these proceedings in Nova

Scotia would cause them any potential or actual prejudice. I make no comment on what effect such an allegation of prejudice might have on these reasons for judgment, because that would involve an assessment of whatever evidence was adduced and submissions made on the issue of prejudice. I do note, as the Crown points out, that this method of proceeding relieves the Crown and the respondents of two separate trials on identical issues with the same witnesses.

[34] In conclusion, I would allow this appeal. I would set aside the decision and order of the trial judge, and order that a Nova Scotia Provincial Court Judge has jurisdiction to try the offences which are the subject of this appeal.

Flinn, J.A.

Concurred in:

Freeman, J.A.

Roscoe, J.A.