

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Prest*, 2012 NSCA 45

**Date:** 20120503

**Docket:** CAC 352263

**Registry:** Halifax

**Between:**

Her Majesty the Queen

Appellant

v.

Todd Earle Prest

Respondent

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**Judge:** The Honourable David P.S. Farrar

**Appeal Heard:** March 26, 2012

**Subject:** **Criminal Law. Defences of Due Diligence and Officially Induced Error. Role of Summary Conviction Appeal Court. Section 686(2) of the Criminal Code**

**Summary:** At trial, Mr. Prest was convicted of operating a motor vehicle while his license was suspended. On appeal, the Summary Conviction Appeal Court (SCAC) allowed the appeal and entered an acquittal based on the defence of due diligence. The Crown appealed.

**Issues:**

1. Were the defences of officially induced error and due diligence available to the respondent on the facts of this case?
2. Did the trial judge err in entering an acquittal rather than ordering a new trial?

**Result:** Leave to appeal granted, appeal allowed and a new trial ordered. There was evidence upon which a properly instructed jury could convict. The proper remedy for the SCAC judge was to order a new trial. By entering an acquittal he erred.

**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 12 pages.**