

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Mercier v. Nova Scotia (Attorney General)*, 2012 NSCA 100

**Date:** 20120920

**Docket:** CA 362099

**Registry:** Halifax

**Between:**

Roger Edouard Mercier

Appellant

v.

Attorney General of Nova Scotia and  
Arthur Theuerkauf

Respondents

**Judges:** MacDonald, C.J.N.S., Hamilton and Beveridge, J.J.A.

**Appeal Heard:** September 17, 2012, in Halifax, Nova Scotia

**Held:** The appeal is dismissed per reasons for judgment of the Court, with costs payable by the appellant to the respondents in the total amount of \$500 inclusive of disbursements

**Counsel:** Appellant in person  
Duane Eddy, for the respondent

**Reasons for judgment by the Court:**

[1] Roger Edouard Mercier appeals Justice C. Richard Coughlan's February 6, 2012 order dismissing his civil action against the respondents, following their summary judgment motion on the pleadings pursuant to Civil Procedure Rule 13.03.

[2] Mr. Mercier commenced his civil action, seeking special damages of \$35,000 together with unliquidated damages, on May 31, 2011. His claims arose from the following circumstances which Mr. Mercier feels violated his **Charter** rights.

[3] On July 16, 2010, the New Brunswick Provincial Court placed Mr. Mercier on a one year recognizance containing a curfew. Mr. Mercier moved to Halifax. During the hours that Mr. Mercier was to be at his home on October 23, 2010, the Halifax police conducted a curfew check. Mr. Mercier did not present himself at the door. The police charged him with breach of recognizance and arrested him on October 26, 2010. He was taken to cells on October 27, 2010, pled not guilty, his trial was set for September 26, 2011 and he was released. After reviewing Mr. Mercier's file, the Crown Prosecutor respondent determined the New Brunswick recognizance did not require Mr. Mercier to present himself at the door during a curfew check so that there was no reasonable prospect of conviction. He had Mr. Mercier's matter placed on the docket for November 30, 2010 at which time, at the Crown's instance, the charges were dismissed for want of prosecution.

[4] In the process of advancing this appeal, Mr. Mercier seeks to introduce fresh evidence which includes:

- excerpts from police reports
- correspondence
- a transcript of the November 30th proceeding, and
- an audio recording of a November 24, 2010 conversation between the appellant and the respondent Arthur Theuerkauf.

[5] We deny the appellant's motion and decline to admit this proposed evidence. We do so because it is completely irrelevant to the issues on appeal. The proposed fresh evidence attacks the respondents' defence to the statement of claim whereas the claim was struck because it disclosed no sustainable cause of action; regardless of what may have been contained in the respondents' defence.

[6] Furthermore, we are of the unanimous view that this appeal be dismissed. Whatever complaint Mr. Mercier may have about what happened to him during this process, the motions judge did not commit reversible error by concluding that the statement of claim disclosed no sustainable cause of action against either respondent in this appeal.

[7] We would, therefore, dismiss the appeal with costs to the respondents in the total amount of \$500 inclusive of disbursements.

**Per Curiam**

MacDonald, C.J.N.S.

Hamilton, J.A.

Beveridge, J.A.