

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Hicks*, 2013 NSCA 89

Date: 20130722

Docket: CAC 409943

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Garth Thomas Hicks

Respondent

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: June 5, 2013

Subject: **Environment Act, S.N.S. 1994-95, c. 1. Authority to Enter and Inspect Property. Public vs. Private Interests. Environmental Protection. Regulatory Legislation. Jurisdiction. Standard of Review. Statutory Interpretation.**

Summary: A property owner was acquitted on a charge that he obstructed a provincial inspector from entering or inspecting his property, following a complaint that he was burning substances in his yard contrary to the **Act**. Although the trial judge found as a fact that the owner deliberately hindered the inspector so as to prevent her inspection of his premises, he was acquitted because the burn barrel out in the yard was in a “private dwelling place” which obliged the inspector to first obtain the land owner’s permission or (in lieu thereof) a warrant authorizing entry onto the premises. The land owner’s acquittal was upheld at the SCAC. The Crown appealed.

Held: Appeal allowed. Neither the trial judge nor the SCAC judge referred to the clear and extensive declaration of purpose contained in s. 2 of the **Act**, or to any of the well-settled norms for statutory interpretation. These failings caused them to err in the interpretation of “private dwelling place” in s. 120 of the **Act**.

The phrase “private dwelling place” must mean an abode, a structure inhabited by persons on a permanent or temporary basis.

That was the special circumstance the Legislature foresaw as requiring either permission, or a warrant, before entry. To interpret the phrase “private dwelling place” as including the owner’s yard where his burn barrel was located was incompatible and incongruent with the stated purpose and objects of the **Act**.

The correct interpretation of these words will encourage compliance for the sake of the community at large while maintaining a proper balance between the public interest and the individual’s right to privacy.

The owner’s outside yard was not a private dwelling place. The inspector had authority to enter and inspect and did not require the owner’s permission or a court order to do so.

Leave granted, appeal allowed, SCAC decision overturned, acquittal set aside, a conviction entered, and the case remitted to the Provincial Court for sentencing.

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 17 pages.