

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Nova Scotia (Ombudsman)*, 2017 NSCA 31

Date: 20170421

Docket: CAC 457321

Registry: Halifax

Between:

The Office of the Ombudsman of Nova Scotia

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: March 24, 2017, in Halifax, Nova Scotia

Subject: Production Orders under the *Criminal Code* – Confidentiality under the *Ombudsman Act*, R.S.N.S. 1989, c. 327

Summary: The Ombudsman’s Office investigated allegations of wrongdoing by the Cumberland Regional Development Authority. Later the allegations were investigated by the RCMP. The RCMP obtained a Production Order under s. 487.014 of the *Criminal Code*, requiring the Ombudsman to produce its file material.

The Ombudsman applied to a judge of the Provincial Court, under ss. 487.0193(1) and (4) of the *Criminal Code*, for revocation of the Production Order. Section 487.0193(4)(b) says the judge “may revoke or vary” the Production Order “if satisfied that ... production ... would disclose information that is privileged or otherwise protected from disclosure by law”. The *Ombudsman Act* of Nova Scotia says that the Ombudsman’s investigation will be conducted in secret and

the information received will not be divulged.

The judge of the Provincial Court varied the Production Order to require that the Ombudsman's Office produce only a summary (1) of information that suggested knowledge of false claims and (2) stating the number of individuals who provided information to the Ombudsman's Office.

The Ombudsman's Office applied for judicial review of the Varied Production Order. A judge of the Supreme Court of Nova Scotia dismissed the application.

The Ombudsman's Office appealed to the Court of Appeal.

Issues:

Is the Ombudsman's information "otherwise protected from disclosure by law" within s. 487.0193(4)(b) of the *Code*?. If so, is revocation mandatory, or does s. 487.0193(4) give the Provincial Court judge a discretion to vary the Production Order? If the judge had a discretion to vary, did she commit an appealable error in the exercise of her discretion?

Result:

The Court of Appeal dismissed the appeal. The information obtained by the Ombudsman's investigation is "otherwise protected by law" within s. 487.0193(4)(b) of the *Criminal Code*. The words "may revoke or vary" in s. 487.0193(4) give the judge of the Provincial Court a discretion either to revoke or vary the Production Order. The judge of the Provincial Court did not err in the exercise of her discretion. The reviewing judge did not err in her application of the standard of review.

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 14 pages.