NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Campbell*, 2018 NSCA 42

Date: 20180523
Docket: CAC 467101
Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Robert Michael Campbell

Respondent

Judges:	MacDonald, C.J.N.S., Saunders and Bourgeois, JJ.A.
Appeal Heard:	April 10, 2018, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons for judgment of Bourgeois, J.A.; MacDonald, C.J.N.S. and Saunders, J.A. concurring
Counsel:	Monica G. McQueen, for the appellant Roger A. Burrill, for the respondent

Reasons for judgment:

[1] On May 7, 2016, members of the RCMP executed a search warrant at the respondent's home in Brooklyn, N.S. The respondent was subsequently charged with drug and firearm offences.

[2] The respondent challenged the validity of the search warrant. He submitted the warrant was fundamentally flawed on its face and, as such, the search undertaken of his home constituted a breach of his right under s. 8 of the *Canadian Charter of Rights and Freedoms* to be free from unreasonable search and seizure. He further argued that the evidence collected by virtue of the search ought to be excluded.

[3] Following a *voir dire*, Judge Ronda van der Hoek agreed with the respondent. She found that the search constituted a breach of the respondent's s. 8 *Charter* rights, and the evidence was excluded under s. 24(2). Following the court's decision on the *voir dire*, an acquittal was entered upon invitation of Crown counsel.

[4] The Crown now appeals, saying the trial judge erred in both her s. 8 and s. 24(2) conclusions. For the reasons that follow, I would dismiss the appeal.

Background

[5] Two preliminary observations are in order. In challenging the warrant, the respondent did not suggest that the information contained in the Information to Obtain (ITO) did not give rise to reasonable and probable grounds to believe evidence of an offence would be found at his residence. The sole basis of the respondent's challenge was in relation to an error on the face of the warrant itself. He submitted this error alone was sufficient to render it invalid.

[6] Second, the evidentiary record before the trial judge was limited. There was no evidence adduced in support of, or in opposition to, the respondent's *Charter* motion. The warrant and the ITO were provided to the trial judge as attachments to the briefs of counsel. They were neither originals nor certified copies. Both parties treated the documents as being properly before the court. The two documents provided the only evidentiary context upon which the trial judge could make her decision.

[7] Some non-contentious background can be gleaned from the documents. On May 7, 2016, Cst. Gravel of the Kingston detachment of the RCMP prepared the ITO. He utilized the tele-warrant provisions pursuant to section 487.1 of the *Criminal Code*. The ITO set out his reasonable grounds to believe there was evidence located at the respondent's home which would support several indictable offences. Amongst other things, the ITO set out:

- The RCMP had responded to a call earlier in the day from the general public about a male walking down the road with a shotgun;
- When arriving on scene, police observed a male entering a mini-home on Gaspereau River Road, Brooklyn, N.S., carrying a firearm;
- Police followed to the mini-home and arrested the man, D.J., for firearm related offences;
- D.J. was transported to the New Minas RCMP detachment for further investigation;
- A search of the property was subsequently undertaken by three officers for public and officer safety;
- Cannabis plants were located in the kitchen and in a greenhouse in the backyard;
- Officers also found an unsecured .22 caliber rifle next to the cannabis plants in the greenhouse;
- The police officers left the residence and began conducting surveillance awaiting a search warrant to be approved;
- During the surveillance period, the respondent arrived and advised the officers that he lived at the mini-home. He was arrested and transported to the New Minas detachment.

[8] The ITO provided by the Crown to the trial judge was signed by Cst. Gravel and dated May 7, 2016. The Certificate required by section 487.1(2.1) of the *Code*, which certifies when it was received by the Designated Justice of the Peace, was blank.

[9] The warrant was provided to the trial judge as an attachment to the respondent's pre-motion brief. It appears to have been issued by Justice of the Peace Debbi Bowes on May 7, 2016. The time is noted to be "6:05". Of central

importance in both the court below, and on appeal, is the stated time frame authorized in the warrant. The Justice of the Peace directed:

> This warrant may be executed between the hours of 6:00 p.m. on the 7th day of May, 2016 and 9:00 p.m. on the 7th day of January, 2016.

[10] It is uncontested that the warrant was executed while the respondent was still being held at the New Minas detachment, and his home was vacant. As noted earlier, there was no evidence specifying how, or precisely when on May 7th the search was undertaken.

[11] There is nothing in the record to confirm what, if anything, was seized from the respondent's property when the warrant was executed. However, on June 15, 2016, he was charged with:

- Unlawfully producing cannabis (marihuana) contrary to s. 7(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19;
- Two counts of possession of a firearm while prohibited from doing so, contrary to s. 117.01(1) of the *Criminal Code*; and
- Unsafe storage of a firearm in contravention of the *Firearms Act*, contrary to s. 86(2) of the *Criminal Code*.

[12] There is no dispute that the time frame for execution specified in the warrant is an impossibility and a clear error. The central issue in dispute is the effect of this error on the validity of the warrant and the ensuing search.

The Proceedings Below

[13] The *voir dire* was argued in two separate hearings. The first, held May 31, 2017, addressed the respondent's claim that the search warrant was invalid and, as such, the search constituted a breach of his s. 8 rights. Following the trial judge's conclusion that the warrant was invalid, and gave rise to a breach, the matter was adjourned for further argument on remedy. On July 26, 2017, the trial judge concluded that the evidence obtained pursuant to the search ought to be excluded.

[14] With respect to the s. 8 analysis, the trial judge found that the error on the face of the warrant was not a mere typographical error, but constituted negligence on the part of the police and the Justice of the Peace. She found the warrant was

not valid and accordingly, the search constituted a breach of the respondent's right to be free from unreasonable search and seizure.

[15] Regarding the s. 24(2) analysis, after considering the factors set out by the Supreme Court of Canada in *R. v. Grant*, 2009 SCC 32, the trial judge excluded the evidence obtained during the search of the respondent's property.

Issues

[16] The Crown filed a Notice of Appeal on August 21, 2017 in which it alleges errors of law in both the trial judge's s. 8 and s. 24(2) findings. In her factum, Crown counsel articulates the grounds as follows:

(a) The trial judge erred in finding that a violation of s. 8 of the *Charter* occurred when a warrant with an erroneous and factually impossible time for execution was in fact executed when officers did not note the error; and

(b) The trial judge erred in excluding the evidence obtained from the execution of that warrant, pursuant to s. 24(2) of the *Charter*.

Standard of Review

[17] The standard of review with respect to alleged *Charter* breaches was discussed by this Court in *R. v. West*, 2012 NSCA 112. The Court endorsed the standard as articulated by the Manitoba Court of Appeal in *R. v. Farrah (D.)*, 2011 MBCA 49 where Chartier, J.A. (as he then was) wrote:

> **7** By which standard is this court to review the issue of whether there is a *Charter* breach? There are several components to this question. They are as follows:
>
> a) When examining a judge's decision on whether a *Charter* breach occurred, the appellate court will review the decision to ensure that the correct legal principles were stated and that there was no misdirection in their application. This raises questions of law and the standard of review is correctness.
>
> b) The appellate court will then review the evidentiary foundation which forms the basis for the judge's decision to see whether there was an error. On this part of the review, the judge's decision is entitled to more deference and, absent palpable and overriding error, the facts as found by the judge should not be disturbed (see *Grant* at para. 129).

> c) The appellate court will also examine the application of the legal principles to the facts of the case to see if the facts, as found by the judge, satisfy the correct legal test. In the criminal law context, this is a question of law and the standard of review is correctness (see *R. v. Shepherd*, 2009 SCC 35 at para. 20, [2009] 2 S.C.R. 527).
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> d) The decision on whether to exclude under s. 24(2) of the *Charter* is an admissibility of evidence issue which is a question of law. However, because this determination requires the judge to exercise some discretion, "considerable deference" is owed to the judge's s. 24(2) assessment when the appropriate factors have been considered (see *Grant* at para. 86, and *R. v. Beaulieu*, 2010 SCC 7 at para. 5, [2010] 1 S.C.R. 248).

See also *R. v. Boliver*, 2014 NSCA 99 at para. 10; *R. v. R.E.W.*, 2011 NSCA 18 at paras. 30 – 33; and *R v. Mian, infra*, at para. 77.

Analysis

Ground #1 - The trial judge erred in finding that a violation of s. 8 of the Charter occurred when a warrant with an erroneous and factually impossible time for execution was in fact executed when officers did not note the error

[18] The Crown submits that an examination of the trial judge's s. 8 analysis discloses several errors of law. Of primary significance, the Crown asserts the trial judge fell into error by not recognizing the *Charter* only protects against "unreasonable" searches. Had she considered the leading authorities, *Hunter v. Southam Inc*., [1984] 2 S.C.R. 145 and *R. v. Collins*, [1987] 1 S.C.R. 265, the Crown says the trial judge would have concluded the warrant was presumptively valid and the search reasonable. Instead, the trial judge wrongly required the warrant to meet a standard of facial perfection.

[19] The Crown summarizes this argument in its factum:

> 55. The trial judge in the present matter never addressed the question of whether the search which resulted of the respondent's home, with an error as to time only later discovered, was a "reasonable search" according to the requirements for section 8 of the *Charter* laid down in *Hunter v. Southam* and *Collins* and still authoritative: was there prior judicial authorization, was the search authorized by law, was the search based on reasonable and probable grounds, and was the search conducted in a reasonable manner. The error on the face of the warrant did not affect any of these essential matters. (Footnote omitted)

[20] The Crown also asserts that the trial judge erred by injecting the common-law concept of negligence into her analysis. This led her to erroneously consider the actions of the executing officers and, in particular, the ease with which the typographical error could have been discovered. The Crown submits such considerations should play no part in questioning what was clearly a presumptively valid warrant.

[21] To put the Crown's complaints in context, it is helpful to return to the matter before the trial judge, particularly the manner in which it was presented.

[22] The parties filed pre-motion briefs. Both were less than three pages in length. Both framed the sole issue to be determined in relation to the warrant as:

> Is this merely a typographical error, or is it a serious fundamental defect that makes the warrant invalid?

[23] The respondent relied on three cases in support of his assertion that the error on the face of the warrant constituted a fundamental defect resulting in the warrant being invalid (*R. v. L.S.U.*, [1999] B.C.J. No. 2305; *R. v. Cissell*, [1991] A.J. No. 827; and *R. v. Newson*, [1985] A.J. No. 526). If the warrant were invalid, the respondent argued the search was presumptively unreasonable.

[24] In response, the Crown focused on the distinction between mere technical irregularities which do not invalidate an otherwise presumptively valid warrant and more serious defects which may give rise to concern. Relying on two decisions, *R. v. Pammett*, 2014 ONSC 1242 and *R. v. Hill*, 2001 CanLII 3067 (NSPC), the Crown submitted the circumstances before the court were a clear instance of a typographical error that did not serve to invalidate the warrant, nor render the search of the respondent's home unreasonable.

[25] In rendering her decision, the trial judge relied on *Pammett*. There, Justice McCarthy of the Ontario Superior Court of Justice wrote:

> 10 I am unable to find any s. 8 *Charter* infringement. The comments by the Court of Appeal in *McCarthy*, although not dispositive of the appeal in that case, nevertheless provide binding guidance on the issue. Technical irregularities should not serve to undermine or upset presumptively valid warrants **unless the technical irregularity carries with it some evidence of bad faith or negligence**, or has served to deceive or confuse an involved person. It is clear from the record that the Justice of the Peace issued the warrant in the evening prior to the actual search and that the window allowed for executing the warrant was from 6am to

> 1pm. By implication, this would signify that the warrant was to be executed the next day. It is clear that the date of February 10, 2011 was proposed in the ITO. It is also clear that the search was executed within that window on the target date. **There is absolutely no evidence of bad faith, high handed or neglectful conduct on the part of the police**. In the entire circumstances of this case, the failure to specify the date on which the warrant was to be executed does not render the authorized search unlawful, arbitrary or unreasonable. There was no infringement of the Applicant's *Charter* rights. (Emphasis added)

[26] After referencing the only evidence before her, the ITO and the warrant itself, the trial judge concluded:

> So it's fair to say that, in the circumstances, both the officer who executed, any of the officers who handled and executed the warrant, failed to note that there was a problem on the face of the warrant and the JP failed to note that the time frame that she was authorizing for execution of a warrant was, in fact, an impossibility.
>
> **Pammett** asks me to consider whether there's evidence of bad faith – I don't think there is – or negligence. It's the opinion of this Court that it represents negligence on the part of both the JP who signed it and the police officer who wrote the dates in, and the officer or officers who, in turn, executed the warrant, because, as Mr. Manning pointed out, it's a serious thing and, quite frankly, a great responsibility for people to be able to enter into people's private residences with a warrant, and we should all be sure that warrants are carefully considered, issued only in the proper circumstances, that they are accurate, that the dates are accurate, and anyone handling a warrant after execution should be sure that they have authority to do what is in the warrant by having careful regard to the dates that are contained in the warrant.
>
> … I don't consider it to be a mere typographical error, I think it's negligent. And it's well worth saying that all participants in the justice system have an obligation to ensure that these powers that are authorized in the **Criminal Code** are exercised with a great deal of seriousness and circumspection.

[27] I now return to the Crown's complaints. I see no merit to the Crown's argument that the trial judge failed to turn her mind to specific case authorities relating to what constitutes a reasonable search under s. 8 of the *Charter*. In the motion before her, both the respondent and Crown identified a narrow issue and confined their arguments accordingly. The trial judge was not asked to determine whether the search in question met the criteria set out in *Hunter v. Southam* or *Collins*. The task she was given, and undertook, was to determine the validity of the warrant solely within the context of the error appearing on its face.

[28] I also do not accept the Crown's assertion that the trial judge erroneously required a standard of facial perfection. The trial judge was well aware that a warrant could contain a typographical error which would not impact on its presumptive validity. She also noted, however, that some errors went beyond such harmless errors, and may be problematic. She recognized the task before her, as defined by the parties, was to determine the nature of the error in the warrant. The trial judge clearly understood that some errors on the face of a warrant could be trivial and did not import into her reasoning a standard of facial perfection.

[29] The trial judge also cannot be faulted for considering whether the evidence established "negligence" on the part of the police. At the invitation of the Crown, the trial judge relied on *Pammett* and, in particular, the principle stated therein that negligent police conduct is a factor in determining whether an error on the face of a warrant is trivial or serves to render it invalid. The Crown now criticizes the trial judge for relying on the authority it presented to her.

[30] The concept of negligence is not confined to the realm of tort claims. As the Supreme Court made clear in *Grant*, assessing police conduct is an important aspect of a s. 24(2) analysis. In particular, in the face of a *Charter* breach, trial judges are to place police conduct along a spectrum. Writing for the majority, McLachlin, C.J. and Charron, J. wrote:

> [74] State conduct resulting in *Charter* violations varies in seriousness. At one end of the spectrum, admission of evidence obtained through inadvertent or minor violations of the *Charter* may minimally undermine public confidence in the rule of law. At the other end of the spectrum, admitting evidence obtained through a wilful or reckless disregard of *Charter* rights will inevitably have a negative effect on the public confidence in the rule of law, and risk bringing the administration of justice into disrepute.

[31] It is not at all uncommon for courts, when placing police conduct along a spectrum to utilize terms such as "carelessness" and "negligence". In *L.S.U.*, a case relied on by the respondent, and quoted by the trial judge, an officer's conduct in preparing an ITO was in issue, as were errors on the face of the warrant and the manner of execution. The warrant was found to be invalid. In undertaking the s. 24(2) analysis, the trial judge noted:

> 37 In this case the police acted pursuant to an invalid search warrant. A number of defects or deficiencies are apparent with respect to the search warrant. First, there was the failure to date the search warrant. No adequate explanation is offered for such failure. Second, the search warrant was executed before the time

> specified on the face of the warrant. Again, no adequate explanation is offered for this oversight and no exigent circumstances existed to justify the police acting as they did. Third, the Information to Obtain, sworn in support of the issuance of a search warrant, fails to adequately specify the reasonable grounds for belief. Incorrect information is contained in the Information to Obtain. The source for most of the information is not disclosed. The itemized grounds are not stated to be on information and belief. No adequate explanation is offered for the inclusion of the attached garage. Further, the grounds for belief that any of the items sought would be found in the residence are not addressed in any way.
>
> 38 The violations in this case are serious and not mere technical violations. Certainly the inexperience of the police officers involved in preparing and obtaining the search warrant is a contributing factor but it falls upon police to ensure proper supervision of inexperienced police officers to ensure proper compliance with clearly defined statutory provisions and legal principles.
>
> 39 A high standard is expected of those who seek to exercise or enforce the authority granted to their office. That authority effectively overrides the rights of an individual to an expectation of privacy within the confines of their own home. **Non-compliance with the time indicated on the search, acting on an undated search warrant, and the preparation of an inadequate Information to Obtain is not merely sloppy and careless but amounts to negligence.**
>
> 40 Failure to comply strictly with statutory requirements that give validity to the search warrant, as in this case, leads to the inevitable conclusion that the police officers had negligent disregard for the accused's right to *Charter* protection in the face of superior police power. Although the police could have obtained a valid warrant, in all the circumstances, I cannot conclude the police acted in good faith. The police conduct amounts to disregard for the accused's constitutionally protected right to be free from unreasonable search and seizure without prior judicial authorization and thus constitutes a serious *Charter* breach. (Emphasis added)

[32] More recently, the Ontario Court of Appeal in *R. v. Rocha*, 2012 ONCA 707, noted the existence of police negligence in the obtaining of a search warrant, in particular, weaknesses in the ITO, as a factor in a s. 24(2) analysis. Justice Rosenberg wrote:

> 43 … There was at least negligence in the obtaining of the search warrant. Counsel for the respondent did attempt to go behind the redacted information by cross-examining both the affiant and sub-affiant. The Crown was unable to provide a summary of the unedited ITO that could serve as a judicial summary. While there was no impropriety or bad faith, there was a sufficient inattention to constitutional standards to tip the scales in favour of exclusion given the deleterious effect on the respondent's privacy interests. Notwithstanding the significant public interest in a trial on the merits, I would uphold the trial judge's

> decision to exclude the evidence, despite her error in approach to the first *Grant* inquiry.

[33] The contents of an ITO were also attacked in *R. v. Russell*, 2010 NSSC 323, with the respondent arguing the defective contents failed to give rise to the reasonable and probable grounds required for the issuance of the warrant. The warrant was quashed by the provincial court judge; however, on appeal the decision was reversed. What is significant, however, is the appeal court judge's recognition that police negligence was a factor in assessing the validity of the resulting warrant. Although having found no negligence in the case before him, the comments of Justice MacAdam are instructive:

> 51 With Crown's submissions, I agree. Even if the information provided was inadequate, there was no basis to suggest the Constable was negligent. Even if the ITO could have better explained the basis, or source, of some of the information provided, having in mind the comments of Justice Cromwell of the Nova Scotia Court of Appeal in *R. v. Morris (W.R.) supra*, there was no evidence of negligence. The failure would simply have been to advance sufficient information to justify issuance of the warrants. That could be characterized as misunderstanding the sufficiency of information required to obtain a search warrant; in these circumstances it is not negligence.

[34] Two points can be made in relation to the authorities noted above. Firstly, any analysis with respect to the foundation for a search warrant, its execution, and any resulting argument arising under s. 24(2), is highly contextual. Secondly, police conduct, including the presence of negligence, can be a consideration when challenging the grounds for a warrant and when undertaking a s. 24(2) analysis. I do not accept the Crown's argument that the trial judge was prohibited from considering the existence of police negligence when determining the nature of the error on the face of the warrant.

[35] Having concluded she was entitled to consider police conduct, the trial judge's finding of negligence is entitled to deference. Although the evidentiary record was scant, the trial judge was entitled to reach the conclusion that the failure of the police to notice the obvious error on the face of the warrant was negligent. In this regard, I note the comments of Fontana and Keeshan in *The Law of Search & Seizure in Canada*, 8th ed. at page 61:

> **Where a search warrant appears regular and valid on its face**, issued by the proper justice, it represents, until quashed by subsequent proceedings, full authority to the officer in entering, searching and detaining goods according to its terms and directions. **The search warrant should, on its face, appear to be**

> **issued in the form prescribed by the statute, and issued by the proper court officer, in order to the officer to act upon it**. The executing officer will then be justified in carrying out its mandate even though the information may have been legally insufficient to authorize the issuing of the search warrant, and even though the search warrant might be set aside if application is made. (Emphasis added)

[36] Implicit in the above statement is the expectation that an executing officer should assure him or herself that they are about to act in accordance with the terms of the warrant. That necessitates that they read it. Here, the warrant was not "regular" on its face – it contained an obvious error with respect to the time frame for execution. It was well within the purview of the trial judge to infer either that the obvious error was not noted by police, or conversely, they acted on it notwithstanding the error. No evidence was offered to explain why or how the police acted in the face of an obvious error on the warrant.

[37] Having found no fault with the trial judge's analysis, I would dismiss this ground of appeal.

Ground #2 - The trial judge erred in excluding the evidence obtained from the execution of that warrant, pursuant to s. 24(2) of the Charter

[38] After finding the search constituted a breach of the respondent's right to be secure against unreasonable search and seizure, the trial judge turned to the issue of remedy. Section 24 provides:

> 24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
>
> (2) Where, in the proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[39] The trial judge was well aware of the proper test to be employed. She wrote:

> Having determined a breach of Section 8 of the **Charter** occurred in regard to the issuance of the warrant to search the Campbell residence, I must now conduct a Section 24(2) analysis to determine whether the evidence seized during that search should be excluded.
>
> The test set out in 24(2) is simply stated: Would the admission of the evidence bring the administration of justice into disrepute? The Supreme Court of Canada,

> in **Grant**, identified three lines of inquiry relevant to this determination. They are: (1) the seriousness of the **Charter**-infringing state conduct; (2) the impact of the breach on the **Charter**-protected interests of the accused; and (3) society's interest in the adjudication of the case on its merits.

[40] In considering the seriousness of the breach, the trial judge returned to her earlier observation that the error on the face of the warrant was one that, with a minimum of care and attention, could have been noted by Cst. Gravel, the Justice of the Peace or the executing officers. She also found it significant that the police were aware the premises to be searched were vacant, with no apparent risk for the destruction of evidence should the flawed warrant not be acted upon expeditiously. These were all appropriate considerations.

[41] With respect to the second factor, the impact of the *Charter*-protected interest of the respondent, the trial judge noted the high expectation of privacy within a private residence. Finally, with respect to the third factor, the trial judge considered the nature of the charges and concluded that society had a "medium" interest in an adjudication on the merits.

[42] Balancing the three factors, the trial judge determined "in all the circumstances, that there should be an exclusion of evidence obtained as a result of the search".

[43] On appeal, the Crown does not take issue with the trial judge's analytical framework, notably her reliance on *Grant*. The Crown's complaint is summarized in its factum as follows:

> 73. In the event that this Honourable Court concludes that there was a breach of the Applicant's rights under section 8 of the *Charter*, the appellant respectfully submits that the following factors are relevant in the case at bar for the purposes of a section 24(2) analysis:
>
> a) On an objective and subjective standard, the police officers had reasonable grounds for the search, and respected the principle of prior judicial authorization in obtaining a warrant.
>
> b) The evidence that was seized was non-conscriptive and thus its admission would not render the trial unfair.
>
> c) Any violation if committed, was committed in good faith.
>
> d) The exclusion of the evidence would lead to the automatic acquittal of the respondent in circumstances that would offend the community and bring the administration of justice into disrepute. While the drugs in question may be considered "soft", the effect on society of drugs and the related social evils,

> including spin off crimes, has been well recognized by the courts. The presence of a gun, potentially in the possession of an individual for whom this had been prohibited, added a significant importance to the societal interest in adjudication on the merits. The Court should accordingly contextualize the analysis by taking into account the many concerns and dangers associated with drug offences.

[44] With respect, the Crown's complaint respecting the trial judge's analysis is a challenge to her findings of fact, and the subsequent balancing she undertook. The trial judge was in the best position to determine whether admission of the evidence, in the circumstances as she found them, would bring the administration of justice into disrepute. Absent an error of law, this Court should not intervene. As noted by Justice Rothstein in *R. v. Mian*, 2014 SCC 54:

> [77] It is well established that the determinations of trial judges as to what would bring the administration of justice into disrepute having regard to all of the circumstances will be reviewed deferentially: "Where a trial judge has considered the proper factors and has not made any unreasonable finding, his or her determination is owed considerable deference on appellate review" (*R. v. Côté*, 2011 SCC 46, [2011] 3 S.C.R. 215, at para. 44, *per* Cromwell J.). Applying that standard in this case, there is no basis for overturning the trial judge's decision to exclude the evidence under s. 24(2) of the *Charter*. Although the Crown argues that the trial judge committed serious legal errors in his s. 24(2) analysis, the Crown's arguments amount to attacks on the trial judge's findings of fact and his ultimate assessment under s. 24(2) of the *Charter*. It is significant that this case involved a Crown appeal from an acquittal, which limits the Crown's challenge to the decision of the trial judge to questions of law.

[45] I would dismiss this ground of appeal.

Disposition

[46] For the reasons above, I would dismiss the appeal.

Bourgeois, J.A.

Concurred in:

MacDonald, C.J.N.S.

Saunders, J.A.