

**CASE NO.**

Cite as; R. v. Simpson, 1998 NSCA 184

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HER MAJESTY THE QUEEN

- and -

JASON SIMPSON

Appellant

Respondent

C.A.C. No. 146191

Halifax

ROSCOE, J.A.

**APPEAL HEARD:**

September 14, 1998

**JUDGMENT DELIVERED:**

November 3, 1998

**SUBJECT:**

**Charter: Costs against Crown as remedy pursuant to s. 24**  
**Criminal: Functus officio**  
**Practice: Use of interlocutory application, slip rule**

**SUMMARY:**

The respondent was charged with two offences pursuant to the **Fisheries Act**, R.S.C., 1985, c. F-14 and **Regulations** and was found guilty in Provincial Court. On a summary conviction appeal, the convictions were set aside and a new trial ordered, as a result of a finding that there had been a reasonable apprehension of bias shown by the trial judge. The respondent was acquitted after the second trial in Provincial Court.

By Interlocutory Notice the respondent applied in Supreme Court Chambers for an order requiring that the Crown pay solicitor and client costs to the appellant for the original trial, the appeal and the new trial. The same Supreme Court judge who had allowed the summary conviction appeal, ordered that the Crown pay the solicitor/client costs of the respondent. The total costs payable were taxed at \$28,456.69.

**ISSUE:**

Did the Chambers judge have jurisdiction to make the costs order?

**RESULT:**

Appeal allowed. The Chambers judge did not have jurisdiction to order Her Majesty the Queen to pay the solicitor/client costs of the respondent as a remedy pursuant to s. 24(1) of the **Charter**. There was no express finding of a breach of the respondent's **Charter** rights either in the first decision allowing the appeal nor in the subsequent decision. There was no application made by the respondent for costs either pursuant to s. 826 of the **Criminal Code** or as a s. 24(1) remedy when the matter was before the Summary Conviction Appeal Court. Having completed his mandate and disposed of the matter on the merits, the Chambers judge was *functus officio*, and therefore lacked jurisdiction as the Summary Conviction Appeal Court judge

when the order for costs was made. There was no other **Criminal Code** jurisdiction over the summary offence remaining in the Supreme Court once the matter was remitted to the Provincial Court.

Any jurisdiction to grant a **Charter** remedy must have been civil in nature because the Supreme Court had no criminal jurisdiction over the offence. A civil remedy for breach of **Charter** rights brought in a court that does not otherwise have jurisdiction, must be commenced by way of originating notice. There was no existing action in which it could properly be an interlocutory motion.

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