

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Briand*, 2003 NSCA 94

Date: 20030924

Docket: CA177599

Registry: Halifax

Between:

Troy Briand

Appellant

v.

Her Majesty the Queen
(Public Prosecution Services and Department of Justice)

Respondents

Judges: Freeman, Bateman & Hamilton, JJ.A.

Appeal Heard: September 15, 2003, at Halifax, Nova Scotia

Held: Appeal Dismissed

Counsel: Troy Briand, self-represented appellant
Edward A. Gores, for the respondents

Reasons for judgment:

[1] This is an appeal from the decision of Justice Glen G. McDougall of the Nova Scotia Supreme Court, dated February 20, 2002, wherein he dismissed Troy Briand's chambers application to set aside two notices prohibiting him from entering on certain premises pursuant to Section 3 of the **Protection of Property Act**, R.S.N.S. 1989, c. 363, as amended. The setting aside of these notices was the only issue before the chambers judge and is the only issue on appeal, despite Mr. Briand's wish to broaden the appeal.

[2] The first notice issued by the Nova Scotia Department of Justice, dated February 20, 2001, prohibited Mr. Briand "from entering upon the premises of the Department of Justice located on the 3rd and 4th floors of 5151 Terminal Road, Halifax, Nova Scotia."

[3] The second notice issued on behalf of the Public Prosecution Service, dated April 26, 2001, prohibited him from entering or being on the property or premises of the "Public Prosecution Service, Crown Attorneys Office, Suite 1325, 1505 Barrington St. (Maritime Centre) Halifax" for a period of 12 months following the date of the notice. This 12 month time period expired over a year ago.

[4] The standard of review with respect to this appeal is whether the chambers judge applied wrong principles of law or a patent injustice arose when he dismissed the application. **Minkoff v. Poole** (1991), 101 N.S.R. (2d) 143 ¶ 9

[5] The **Protection of Property Act** does not expressly provide for an attack on the validity of a notice issued pursuant to it. I have doubts that a notice can be challenged, save, possibly, at a trial where a person such as Mr. Briand has been charged with a breach of such a notice (see, for example, **R. v. Marcocchio**, [2002] N.S.J. No. 193 (Prov. Ct.)). Even if such a process exists, Mr. Briand has not satisfied the burden which would be on him to adduce evidence or otherwise satisfy the court that the notices were not issued in accordance with the **Act** or that they suffer from any other defect.

[6] Notwithstanding that Mr. Briand was prevented by these notices from attending at the premises without legal justification, he is free to communicate by other means with persons at these places. There is no evidence that his attendance is necessary to such communication.

[7] In these circumstances I would dismiss his appeal.

Hamilton, J.A.

Concurred in:

Freeman, J.A.

Bateman, J.A.