

**CASE NO.**

**VOL. NO.**

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KENNETH M. MARSHALL, STEPHEN MAURICE PETER-PAUL, LEON  
R. ROBINSON, PHILLIP F. YOUNG

(Appellants)

- and -

MARTIN E. HERSCHORN, in his capacity as Acting Director of  
Public Prosecutions (Nova Scotia) and HER MAJESTY THE QUEEN

(Respondents)

CA 173680  
CA 174779  
CA 174780

Halifax, N.S.

CROMWELL, J.A.

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[Cite as: **R. v. Marshall, 2002 NSCA 43**]

**APPEAL HEARD:** March 22<sup>nd</sup>, 2002

**JUDGMENT DELIVERED:** April 3<sup>rd</sup>, 2002

**SUBJECT:** **Summary Conviction Appeal - Interlocutory Application for  
Discovery  
Judicial Review - Contents of the Return - Discovery of Statutory  
Decision Maker**

**SUMMARY:** The appellants were convicted in Provincial Court on charges under the  
**Crown Lands Act**, R.S.N.S. 1989, c. 114. They commenced a summary  
conviction appeal to the Supreme Court of Nova Scotia. The then acting  
Director of Public Prosecutions appointed Alexander MacBain Cameron, a  
lawyer with the Department of Justice, as a Crown Attorney to act on any  
appeals resulting from the conviction. The appellants thereupon brought

two proceedings challenging Mr. Cameron's appointment. They applied by way of interlocutory application in the summary conviction appeal to remove him. In aid of that interlocutory application, they brought a further interlocutory application for leave to call the Director of Public Prosecutions as a witness and, in addition, served him with a notice to attend for examination for discovery. The appellants also applied by way of originating notice (application *inter partes*) for orders in the nature of *certiorari* and prohibition in relation to Mr. Cameron's appointment. By way of interlocutory application in the judicial review matter, they applied for a date for the Director of Public Prosecutions to file the return required under **Rule 56**, for an order requiring the Director of Public Prosecutions to attend for examination for discovery and, alternatively, for leave to adduce oral evidence from him on the return of the judicial review application. Wright, J., in the context of the interlocutory application in the summary conviction appeal proceeding, held that the Director of Public Prosecutions was not compellable on discovery. MacDonald, A.C.J.S.C., dealing with aspects of the interlocutory applications in both the summary conviction appeal and in the judicial review proceeding, refused leave for the Director of Public Prosecutions to be called as a witness, defined the contents of the return required by **Rule 56** and refused to order discovery or grant leave to adduce oral evidence. The appellants sought leave to appeal all of these decisions.

**RESULT:**

Applications for leave to appeal dismissed. Since the hearing of the various interlocutory applications, the summary conviction appeal itself had been heard and determined in the Supreme Court of Nova Scotia and the point concerning Mr. Cameron's appointment had not been pursued before the summary conviction appeal court judge. It followed that no practical purpose would be served by hearing the interlocutory appeals in relation to the summary conviction appeal matter.

In relation to the interlocutory appeal in the judicial review proceeding, the proposed appeal did not raise fairly arguable issues. The decision of the Court in **Waverley (Village) v. Nova Scotia (Minister of Municipal Affairs)** (1994), 129 N.S.R. (2d) 298 applied.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 7 pages.</p>
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