

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Martin, 2012 NSPC 76

Date: 20120828

Docket: 2276770-2276795

Registry: Pictou

Between:

Her Majesty the Queen

v.

Darren Martin

***DECISION ON SUBMISSION OF FURTHER MATERIAL AND THE
MAKING OF FURTHER APPLICATIONS***

Judge: The Honourable Judge Del W. Atwood

Written decision: 28 August 2012, in Pictou, Nova Scotia

Charge: 4x sub-s. 239(1) *Income Tax Act (Canada)*; 22 x sub-s.237(1) *Excise Tax Act (Canada)*

Counsel: Constantin Draghici-Vasilescu, for the Public
Prosecution Service of Canada

Darren Martin, on his own behalf

Stephen Robertson, Nova Scotia Legal Aid, *amicus
curiae*

By the Court:

[1] Darren Martin stands charged of four violations of para. 239(1) of the *Income Tax Act (Canada)*, and twenty-two violations of para. 327(1) of the *Excise Tax Act*. Trial dates are fixed presently for 23, 24, 25 and 26 October 2012. I decided recently that a written application brought by Darren Martin to have the charges against him dismissed either did not raise issues justiciable in this Court or dealt with matters which must be addressed at trial.¹ Accordingly, that application was not granted.

[2] Darren Martin filed with the Court yesterday additional written material objecting to my decision not to grant the motion to dismiss and seeking to reargue the point.

[3] Darren Martin has made it very clear that he does not agree with my decision not to grant his motion to dismiss. A party to a proceeding is free to disagree with decisions made by a court in that proceeding. Furthermore, due process affords a means to have an unfavourable decision reviewed. Due process

¹2012 NSPC 73 (CanLII).

is available to Darren Martin, as decisions made in this Court are subject to judicial review in higher courts. However, due process does not allow a party to try to reargue decided issues before the same court.²

[4] A problem has arisen here, in that Darren Martin engaged the services of a provincial civil constable to try to deliver his most recently filed pleadings to me at my home. This is improper. First of all, a provincial civil constable should not be serving this sort of documentation on anybody, given the oath required in para. 5(1)(a) of the Police Services Act.³ These documents were not civil process, if they were process at all. Furthermore, anyone involved in the service of process in this Province ought to be aware that court pleadings must not be delivered directly to a judge. Parties seeking to file pleadings must do so at court; this allows staff to ensure that the judge see only that material that she or he should see. This necessary and crucial screening function is thwarted when parties attempt to deliver documents to the judge outside court. Direct contact gives rise to a real risk of the administration of justice being compromised. What happened here

²See, e.g., *Can-Euro Investments Ltd. v. Industrial Alliance Insurance and Financial Services Inc.*, 2011 NSSC 381 (CanLII).

³R.S.N.S. 1989, c. 349.

must not be repeated. It is the responsibility of those charged with the superintendence of the Police Services Act to ensure that civil constables are trained and directed in such a way that they do not engage in actions which may interfere with the administration of justice. I am confident that the Department of Justice will be dealing appropriately with this concern.

[5] I am informed lately by staff that Darren Martin wishes to bring on an application for further disclosure. Two previous applications for disclosure were dismissed by the Court as raising clearly irrelevant issues. Given the contents of the material Darren Martin filed with the Court yesterday, and given the contents of his previous filings, I do not believe that it is in the interest of justice to entertain further disclosure applications in this case.

[6] Exercising the Court's authority to control its own process, it is ordered as follows:

- Pleadings in this case are now closed, and no further affidavits, motions, applications or documents shall be filed by Darren Martin in this case, except with leave of the Court, and court staff are not to receive any such material

from Darren Martin, with the exception of a letter seeking leave, or leave-allowed materials, as prescribed below.

- Should Darren Martin seek leave of the Court, he shall do so by filing with the Court administration office at the Justice Centre in Pictou a letter, not exceeding five pages in length, stating the nature of his proposed application and the nature of the material he would propose to submit to the Court in support of that application; the Court shall fax that letter as soon as reasonably possible to the prosecutor and the *amicus*; the prosecutor and the *amicus* would then have five clear days from the date time stamped on the transmittal of the fax to furnish the Court, Darren Martin, and each other with a written reply; I would then review Darren Martin's letter and the reply of the prosecution and the *amicus*, if any, and determine whether to grant leave to Darren Martin to file further material and to make further applications.

- An order granting leave shall specify the type of material permitted to be submitted, and shall set out the date and time of the pre-trial hearing; no party shall submit to the Court material not conforming to the leave order; service of

leave-allowed application materials shall be the responsibility of the party submitting the materials.

- Should leave not be granted, Darren Martin shall not re-apply for leave in relation to the same issue.
- Any written material sought to be filed with the Court by either party or by the *amicus* shall be filed with the Court administration office, either by personal delivery, postal mail, private courier or fax; no party is to deliver to the Court, or arrange to have delivered to the Court, any documentation of any nature whatsoever to any location other than at the Court administration office at the Pictou Justice Centre.
- No civil constable is to deliver material intended for the Court in this case on behalf of Darren Martin to any location other than the Court administration office at the Justice Centre in Pictou, and no civil constable is to serve or attempt to serve such documents on a judge.

- Darren Martin is not to contact or attempt to contact the judge in this matter, either directly or indirectly, either orally or by way of written submission, except in open Court or as provided for in this order.

- The Court may vary this order should the interests of justice so require.

SO ORDERED.

J.P.C.