

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Kure*, 2021 NSPC 49

**Date:** 20211130

**Docket:** SOT 25226714

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Eleanor Kure

Defendant

AND

**Date:** 2021-11-30

**Docket:** SOT 25226716

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Kevin Smith

Defendant

<b>PJP:</b>	Presiding Justice of the Peace Debbi Bowes
<b>Heard:</b>	November 21, 2021, in Halifax, Nova Scotia
<b>Decision</b>	November 21, 2021]
<b>Charge:</b>	Section 4, <i>Protection of Property Act</i> , R.S.N.S., 1989, c. 363, s. 1.
<b>Counsel:</b>	Rick Woodburn, for the Crown Jamie Simpson, for the Defendants

## **Introduction**

[1] Crown and Counsel for the Defence agreed to hear both trial matters together. Both Defendants are charged under S. 4 of the *Protection of Property Act*, R.S.N.S., 1989, c. 363, s. 1 which reads as follows:

4 Every person who, without legal justification, whether conferred by an enactment or otherwise, remains on premises after being directed to leave by the occupier or a person authorized by the occupier, is guilty of an offence and is liable on summary conviction to a fine of not more than five hundred dollars.

## **FACTS**

[2] On November 24th 2020, the Defendants knocked on the Department of Lands and Forest/ Energy and Mines door, located on the 3rd floor of Founders Square, Halifax N.S. With letters in hand they were let in by the “secretary” and demanded a meeting with the Minister, otherwise they were not leaving. Ms. Kure stated they were frustrated because government wasn’t listening to their concerns nor would government meet with them. She felt ignored. Ms. Kure stated she had a right to freedom of expression under the *Charter*.

[3] Both Defendants were repeatedly asked to leave , Corporate Security was called, names were gathered and formal Notices under the *Protection of Property Act* were served on the Defendants requiring them to remain away from the premises. The Defendants continued to refuse to leave. Two other individuals left

the premises after being advised police would be called to remove them if they remained. Ms. Kure and Mr. Smith were carried off the premises by police after being advised that this would occur if they continued to refuse to leave.

[4] Due to the pandemic, there were signs indicating the necessity for social distancing and that access to the office was by appointment only. A phone and a phone number to call were available in the vestibule outside of the office. The office door was kept locked. The office itself had a reception area where the Defendants were seated when police arrived.

### **Issue**

[5] The facts weren't in dispute, the issue at trial was whether the *Protection of Property Act* itself provided a defence to the Defendants.

S. 5(1) It is a defence to a charge under Section 3 or 4 that the person charged reasonably believed that he (sic) had legal justification, or permission of the occupier or a person authorized by the occupier, to enter on the premises or do the act complained of.

S. 16 This Act does not apply to a person who is engaged in

...(b) a peaceful demonstration in the vicinity of premises to which the public normally has access.

[6] At issue are the following questions:

1. Did the persons charged believe they had legal justification to protest in the Minister's office?
2. Was the Minister's reception area "in the vicinity of premises to which the public normally has access" ?

### **Argument**

[7] The Crown argued that the Defence did not give Notice of a *Charter* Application, and that the office was not accessible to the public. Further, the Crown argued that the Defendant Smith did not give evidence and therefore is not entitled to claim any reasonable belief as a "legal justification" pursuant to s. 5(1) of the PPA.

[8] Counsel for the Defence argued that the PPA was not intended to apply to peaceful demonstrations and but for the Covid pandemic , the office would be readily accessible to the public. Further the Defence stated they were not raising a *Charter* Argument although I was open to conclude that *Charter* rights may form a "legal justification" under section 5(1) of the PPA.

[9] Counsel for the Defence submitted *R. v. Fraser*, 2002 NSPC 6; (Judge Peter Ross), *R. v. Margaret Gabriel*, (Judge Paul Scovil) 2014 Docket 2663950; and *R. v. Marcocchio*, 2002 NSPC 7 (Judge Peter Ross), for my consideration.

## Decision

[10] I find that the Defendants were clearly involved in protesting the government's actions regarding development and species at risk. They had brought letters for the Minister and were demanding a meeting so that their concerns could be heard. Their refusal to leave the office when requested during normal business hours was a form of that protest.

[11] I find that both Defendants (as well as two other individuals that left the premises) were involved in a common goal to protest what they believed to be their ignored concerns. All individuals arrived together, had letters and a common position...the demanding of a meeting. Further I find that the Defendant Kure believed they were legally justified in protesting their common dissatisfaction, as previous requests had failed in their opinion. Ms. Kure testified that she believed she had the right to "freedom of expression" as guaranteed under the *Charter*. I find on a balance of probabilities that Ms. Kure, a credible witness, reasonably believed she had legal justification to protest in the Minister's Department.

[12] I also find that the reception area where the Defendants were conducting their peaceful protest was "in the vicinity of premises to which the public normally has access". The very broad nature of the wording in s. 16 (b) of the PPA

suggests this should be interpreted liberally. But for the pandemic I find the public could simply walk into the reception area and seat themselves on chairs set out for that purpose. The public still accessed the area but entry procedures were put in place to deal with social distancing. If the legislation was meant to exclude government departments from protest it should have clearly stated same so that the public would have a clear understanding of the law.

[13] Given my findings and that the PPA specifically states that there is to be no prosecution for peaceful demonstrations in the vicinity to which the public normally has access, an acquittal shall be entered for both defendants.

Debbi Bowes, PJP