

CASE NO.

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IN THE PROVINCIAL COURT OF NOVA SCOTIA

[Cite as: R. v. Marcocchio, 2002NSPC007]

Between:

Her Majesty the Queen
and
Bruno Marcocchio

Judge A.P. Ross

Sydney, Nova Scotia

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Heard: at Sydney, N.S., before the Honourable Judge Peter Ross on January 14, 15, 21, February 4, 18, March 11, 2002

Decision: April 11, 2002

Subject: Charter - Freedom of Expression - Protection of Property Act - resisting arrest per s. 129 Criminal Code.

Summary: The Defendant, an environmental activist, was banned from attendance at all meetings of the Joint Action Group, a society comprised, in the majority, of local citizens. JAG's purpose is to engage with governments in seeking remedial solutions to the Sydney Tar Ponds and pollutants in the surrounding watershed. Public participation is central to JAG's mandate. The Defendant defied a notice issued to him under the petty trespass statute by attending and insisting on the right to speak at two functions sponsored by JAG.

The first was a meeting in a community hall to which residents of a defined area were invited. The second was an "open house" to which the general public was invited. On each occasion the Defendant was arrested and taken away by police. He was charged with a violation of the Protection of Property Act, resisting arrest, and a simple assault. He claimed, on the basis of his s. 2(b) Charter right, that his trespass on the properties was justified; that the PPA ban was unconstitutional, and that the police therefore had no basis upon which to arrest him. Relief was sought per s. 24(1) of the Charter.

Issues:

1. Is JAG part of government under s. 32 of the Charter?
2. Can government utilize the notice provisions of a petty trespass

statute to prohibit a person from attending on premises where the government is making those very premises available as a forum for public discussion?

3. Is there a breach of s. 2(b) of the Charter; if so, is it saved by s. 1 under which the Defendant's charter rights and JAG's legitimate interest in protecting its process are balanced?

Result:

The restriction on the Defendant's right of expressions is saved, in these circumstances, by s. 1. The Police therefore possessed a valid arrest power. Resistance on one occasion was more than merely passive. The Defendant was found guilty of s. 129 and s. 266 of the Criminal Code. However, under s. 5 of the PPA, the Defendant could claim a reasonable belief in legal justification as a defence to the petty trespass infraction itself. Such defence no longer available with issuance of this ruling.

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