

SUPREME COURT OF NOVA SCOTIA

Citation: Cummings v. Nova Scotia, 2011 NSSC 324

Date: 20110629

Docket: Hfx No. 350339

Registry: Halifax

Between:

Wanda Cummings

Applicant

v.

Her Majesty the Queen and
The Attorney General of Nova Scotia and
The Attorney General of Canada and
The Halifax Regional Municipality

Respondents

Judge: The Honourable Justice C. Richard Coughlan

Heard: June 29, 2011 (in Chambers), in Halifax, Nova Scotia

Decision: June 29, 2011 (Orally)

**Written Release
of Decision:** August 24, 2011

Counsel: Wanda Cummings, self-represented Applicant
Craig Botterill, for the Public Prosecution Service
Sheldon A. Choo, for the Attorney General of Nova
Scotia
Melissa Grant and Melissa Chan, for the Attorney
General of Canada

Coughlan, J.: (Orally)

[1] Wanda Cummings filed a notice for judicial review on June 13, 2011, seeking the following relief:

1. An order directing the respondents, and any other person who receives notice of the order, cease to take any further action against the applicant in the Provincial Court, including, but not limited to, applications under Section 803 of the *Criminal Code* (*Batchelor v. R.*, [1978] 2 S.C.R. 988).
2. An order for a change of venue to Halifax, NS, wherein the *Charter* Application shall be heard by the Supreme Court of Nova Scotia, having inherent jurisdiction to do so due to the violations of the Provincial Court.
3. An order for interim costs.
4. An order quashing all informations, warrants, undertakings, and recognizances which are null and void; a dismissal of all charges; and a declaration that jurisdiction had been lost by the Provincial Court over the charges laid against the Applicant; and that all arrests and warrants were null and void and of no force and effect.
5. A sealing order for confidential and privileged documents used in this application as well as all related proceedings, pursuant to the provisions of s. 486(3.1) and Part XX.1 of the *Criminal Code*; the *Hospitals Act*, the *Privacy Act*, and the *FOIPOP Act*.

[2] This matter appears to deal with charges currently before the Provincial Court of Nova Scotia and should be dealt with following the provisions of the *Criminal Code*, the procedures of the Provincial Court including, if required, the provisions of the *Criminal Code* as to appeals from the Provincial Court.

[3] This is not the proper subject of a notice for judicial review, and I strike the notice for judicial review (without prejudice to Ms. Cummings' right in the proper circumstances to take appropriate action).

[4] Wanda Cummings moves for an order sealing all materials filed in this proceeding, a non-publication order and leave to file all materials anonymously.

[5] Civil Procedure Rule 85.04 provides:

85.04 (1) A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the *Canadian Charter of Rights and Freedoms* and the open courts principle.

(2) An order that provides for any of the following is an example of an order for confidentiality:

- (a) sealing a court document or an exhibit in a proceeding;
- (b) requiring the prothonotary to block access to a recording of all or part of a proceeding;
- (c) banning publication of part or all of a proceeding;
- (d) permitting a party, or a person who is referred to in a court document but is not a party, to be identified by a pseudonym, including in a heading.

(3) A judge who is satisfied that it is in accordance with law to make an order excluding the public from a courtroom, under Section 37 of the *Judicature Act*, may make an order for confidentiality to aid the purpose of the exclusion.

[6] Civil Procedure Rule 85.05(1) and (2) provides:

85.05 (1) A party who makes a motion for an order for confidentiality, or to exclude the public from a courtroom, must give reasonable notice to representatives of media, unless a judge orders otherwise.

(2) The notice to media representatives may be given by using the service provided by all courts in Nova Scotia for giving notice to the media through the internet.

[7] Notice of this hearing was given on June 20, 2011 by posting on the service provided by all courts in Nova Scotia for giving notice to the media through the internet.

[8] The evidence before me consists of an affidavit of Wanda Cummings deposed to June 20, 2011, which states:

1. I, Wanda Cummings, of 22 Sunnydale Avenue, Apt. 3, Dartmouth, in the Province of Nova Scotia, swear that:
2. I have personal knowledge of the matters herein deposed to except where otherwise stated.
3. I have suffered privacy breaches of my personal information related to the proceedings herein;
4. I have been unlawfully arrested under the guise of mental illness. I have suffered undue hardship due to the stigma attached. My business partner, Gillian Leigh, has told me that she has suffered due to the unlawful arrests of me and the stigma surrounding the arrests, and I do verily believe that what she tells me is true;
5. I make this motion in support of my motion for confidentiality and non-publication orders as reasonable measures regarding the protection of my privacy, and that of Ms. Leigh, have failed in the past.
6. I do verily believe that a motion for confidentiality and non-publication is necessary in order to prevent further and irreparable harm.

[9] The *Canadian Charter of Rights and Freedoms* guarantees freedom of communication and freedom of expression. The process of the courts is to be open to Canadians, as Fish, J. said in giving the Court's decision in *Toronto Star Newspapers Ltd. v. Ontario*, [2005] 2 S.C.R. 188 at p. 191:

... Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would *subvert the ends of justice or unduly impair its proper administration*.

[10] Justice Fish went on to say at p. 192:

... In my view, the *Dagenais/Mentuck* test applies to *all* discretionary court orders that limit freedom of expression and freedom of the press in relation to legal proceedings. ...

[11] The test was set out by Iacobucci, J., in giving the Court's judgment, in *R. v. Mentuck*, [2001] 3 S.C.R. 442 at p. 462:

A publication ban should only be ordered when:

(a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent the risk; and

(b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[12] The onus is on the party seeking the confidentiality order to justify the order sought. There must be a sufficient evidentiary basis for any order which is granted.

[13] There is no evidence before me justifying granting the type of confidentiality order Ms. Cummings is seeking.

[14] I dismiss the motion.

Coughlan, J.