

Date: 20020924
Docket: S. H. No. 165341

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: Downey v. Durnford, 2002 NSSC 215]

BETWEEN:

WADE REGGIE DOWNEY

APPLICANT

- and -

JOSEPH DUNFORD and ANIKO DUNFORD

RESPONDENTS

D E C I S I O N

HEARD: Before the Honourable Justice Suzanne M. Hood at Halifax,
Nova Scotia in Chambers on July 23, 2002

DECISION: July 23, 2002 (Orally)

**WRITTEN RELEASE
OF ORAL:** September 24, 2002

COUNSEL: **David W. Richey** for the Applicant
W. Augustus Richardson for the Respondents

HOOD, J. (Orally):

- [1] With respect to the surveillance, it seems to me that the law is quite clear with regard to surveillance tapes. *Rule 31.15* provides that they do not need to be disclosed if their only purpose is to be used for cross-examination. It seems to me that to order that a surveillance tape or reference to it in documents be disclosed prior to its possible use at trial for purposes of cross-examination under *Rule 31.15* would completely take away any meaning from *Rule 31.15*.
- [2] I refer to the case of *Faulkner v. Barkhouse*, [1989] N.S.J. No. 429 (N.S.S.C.) as well as *Clark v. O'Brien*, [1995] N.S.J. No. 458, a decision of the Court of Appeal with respect to surveillance tapes and the meaning of *Rule 31.15*. I conclude that that material does not need to be disclosed.
- [3] In so concluding, I disagree with the position put forward by Mr. Richey that it can only be withheld if it falls within the “dominant purpose” test. It seems to me that with respect to such things as surveillance tapes there are two ways in which such things can be withheld: one is the “dominant purpose” test and the other is if it falls under *Rule 31.15* which means that it can be used only for cross-examination at trial.

Hood, J.