

SUPREME COURT OF NOVA SCOTIA

Citation: Barton v. Nova Scotia (Attorney General), 2013 NSSC 121

Date: 20130417

Docket: Hfx. No. 396602

Registry: Halifax

Between:

Gerald Gaston Barton

-and-

**The Attorney General of Nova Scotia representing her Majesty the Queen in
right of the Province of Nova Scotia and The Attorney General of Canada**

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Judge: The Honourable Justice Robert W. Wright

Heard: April 4, 2013 at Halifax, Nova Scotia

Written

Decision: April 17, 2013

Subject: Summary judgment on the pleadings - sufficiency of material facts pleaded to disclose reasonable cause of action - Civil Procedure Rules 13.03 and 38.02.

Summary: In 1970, at the age of 19, the plaintiff was wrongfully convicted of a serious sexual offence against a 14 year old girl for which he was briefly incarcerated and sentenced to one year's probation. In 2008, it was determined through DNA testing that the perpetrator of the offence was the complainant's brother. Based on that fresh evidence, the plaintiff's conviction was set aside by the Nova Scotia Court of Appeal who characterized it as a miscarriage of justice. The plaintiff then sued both the Attorney General of Nova Scotia and the Attorney General of Canada, pleading the torts of negligent investigation and malicious prosecution as against both defendants. They have subsequently brought in tandem motions for summary judgment on the pleadings.

Issue: Have the defendants met the test for the granting of summary judgment on the pleadings in respect of either or both of the tort claims brought against them?

Held:

(1) The summary judgment motion of the Attorney General of Nova Scotia was granted in respect of the cause of action of negligent investigation because the law is clear that no such action lies against a Crown prosecutor in the performance of his prosecutorial duties;

(2) The summary judgment motion of the Attorney General of Nova Scotia was dismissed in respect of the cause of action of malicious prosecution because the defendant was unable to discharge the burden of satisfying the court that the material facts pleaded (and assumed to be true on the motion) did not disclose a reasonable cause of action or that the action was absolutely unsustainable;

(3) The summary judgment motion of the Attorney General of Canada was granted in respect of the cause of action for malicious prosecution because the material facts pleaded did not disclose a reasonable cause of action in that regard; and

(4) The summary judgment motion of the Attorney General of Canada was dismissed in respect of the cause of action of negligent police investigation because the defendant was unable to discharge the burden of satisfying the court that the material facts pleaded failed to disclose a reasonable cause of action in that regard or that it was absolutely unsustainable.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.
