IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Hicks, 2012 NSSC 419

Date: 20121108
Docket: CR. Am. 396766
Registry: Amherst

Between:

Her Majesty the Queen

Appellant

v.

Garth Thomas Hicks

Respondent

Judge:	The Honourable Justice J. E. Scanlan
Heard:	8 November 2012, in Amherst, Nova Scotia
Written Decision:	4 December 2012
Counsel:	Ms. Mary Ellen Nurse, for the appellant Mr. Douglas Shatford, for the respondent

By the Court:

[1] This is an appeal of a decision of Judge Scovil on a matter that was heard April 12th, 2012 and there was a written decision dated May the 31st, 2012. The respondent was acquitted on a charge under section 158 of the *Environment Act*. The charge was that:

> A person who
>
> > (d) hinders or obstructs an inspector or administrator who is exercising powers or carrying out duties, or attempting to do so, pursuant to the Act;
>
> is guilty of an offence.

[2] In this case, as I understand the situation, the inspector in question became aware of an anonymous tip or complaint that there was materials being burned at a specific location. The officer attended at that location. I have a great deal of difficulty with the evidence of the officer wherein she states she was there doing an inspection, as opposed to an investigation. I am finding it very difficult to understand how an officer could follow up on a tip or a complaint and go to a premises without investigating the complaint, as opposed to simply going there to do a random inspection. However, the trial judge did not address the issue as to whether or not this was an inspection or an investigation. That is a major obstacle the crown would have to face if this matter was to go back to trial. I don't know how crown could possibly get beyond the fact that this was an investigation, as opposed to an inspection. However, I do not have to, nor am I really able to make a determination as to whether or not factually this was an investigation versus an inspection.

[3] I refer to the fact that under section 120 of the *Act* it states that:

> Notwithstanding anything contained in this Act, an inspector may not enter a private dwelling **place** or any part of a place that is designed to be used and is being

> used as a permanent or temporary private dwelling place except
>
> > (a) with the consent the of the occupant of the place; or
> >
> > (b) pursuant to an order under section 121 to enter and inspect, or under the authority of a search warrant.
> >
> > (emphasis added)

[4] The crown argues on this appeal that if the court is to rule, as did Judge Scovil, that dwelling place included the yard, that it's going to wreak havoc with the inspection regime, so that inspectors will no longer be able to go and knock on doors and ask to see things. The *Act* does specifically provide for people to give their consent. It says, under section 120(a), and I have already read it; except "with the consent of the occupant of the place".

[5] The question in this case is a very narrow one, and that is whether or not the definition of "private dwelling place" includes more than just the house. In other words, do you have to go inside the doors to be caught by the limitation wherein you require either consent or an order or a warrant.

[6] I am satisfied that private dwelling place is undefined by the *Environment Act*, but the *Act* does set out what a place is. The crown in this case does not argue that the structure on that property was not a dwelling, as I understand it. I think the crown would concede, and implicitly concedes that it was a dwelling.

[7] So really the issue is, what does "place" mean? Place is actually defined in this *Act.* Section 3 says:

> In this Act
>
> > (an) "place" includes any land, building, structure, machine, aircraft, vehicle or vessel.

[8] I accept that the *Act* itself defines place to include land, not just the structure. The question is, is this land that is used in association with, in immediate association with the house, as opposed to land that would not be used, and does not have a direct connection to the dwelling? For instance, this *Act* would not require an order for forestry land or farm land, for commercial properties. The list could go on and on and on. But when it is land or a dwelling place, and place is defined in the *Act* to include land, and in this case land that was directly associated with or attached to the house. That wasn't argued as being an error that the judge made. In other words if you're not arguing, implicitly or expressly, this was in the front yard or back yard of a house, I am satisfied that in this case the land was attached to and associated with the house, and it's caught within the definition of place as set out in the *Act*.

[9] There are many examples in both provincial legislation and in the *Criminal Code*, and that was noted by the trial judge, where dwelling house is defined under section 2 of the *Criminal Code*, for example:

> "dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence...

Certainly in the *Criminal Code* we know what a dwelling house is. It's the structure. It's occupied as a residence.

[10] This *Act* does not adopt the definition as set out in the *Criminal Code*, nor does it use the words as set out in the *Criminal Code*. It uses different words. Indeed there are other provincial acts that use dwelling house, or dwelling residence. This one doesn't. It uses the words "dwelling place". Inspectors that choose to go and inspect a dwelling place have to be a little more careful and understand that people in fact do occupy these properties as their dwelling place, and they are deserving of a little more care and caution. In this case, she could have gone, got the consent and said, "Look, I want to look at this burn barrel and I want to discuss with you what's been going on with it". She didn't get that consent. It was obvious, and she took his words of "Please leave" or "leave" or "LEAVE" and you could state it one of many ways. That was a clear expression of a lack of consent. If she wanted to go back and look at that burn barrel, she

could have then obtained a warrant if she had sufficient grounds. Absent a warrant, she had no right to be there, because of the lack of consent.

[11] I am satisfied the appeal should be dismissed.

[12] I do note, and the crown had referred to the decision of Justice Fichaud of the Court of Appeal, October the 4th, 2011, *R. v. Benoit* 2011 NSCA 99. In that case the officer was acting under a complaint, or doing an investigation under the *Prevention of Cruelty to Animals* legislation. If I can find the *Act*. *Animal Cruelty Prevention Act*, I believe it is. There was a reference to a dog or puppies removed from a garage. At paragraph 33 it was noted that the dogs were not seized from a dwelling, they were in a garage. I note that it was in *obiter*, but the judge starts that paragraph, paragraph 33 by saying:

> The search and seizure was further to warrants. There was no application to quash the warrants.

So the search in the house was pursuant to a warrant, and then they seized the animals. They were seized in a garage, not a dwelling.

[13] This was a dwelling place. She needed an order for consent. The appeal is dismissed, as I indicated.

J.