

Date: 2002/01/09
Docket: Cr. No. 145665

CANADA
PROVINCE OF NOVA SCOTIA

Cr. No. 145665

IN THE SUPREME COURT OF NOVA SCOTIA

[Cite as R. v. Black, 2001 NSSC 365]

HER MAJESTY THE QUEEN

against

FREDERICK WILLIAM LOGAN BLACK

D E C I S I O N

Revised Decision: The neutral citation number has been changed from 2002 NSSC 25 to 2001 NSSC 361 **on December 21, 2017**. This decision replaces the previously released decision.

HEARD: Before the Honourable Justice John D. Murphy, Supreme Court of Nova Scotia, at Halifax, Nova Scotia, on December 4, 2001.

DECISION: December 4, 2001, Orally.

**WRITTEN
RELEASE
OF ORAL:** January 29, 2002

COUNSEL: **Gary Holt, Q.C., for the Crown**
Frederick Black, personally, Defence
D. Bruce Clarke, for George Redling

MURPHY, J.

- [1] George F. Redling has applied to quash a subpoena which directs him to attend to testify and provide documentation at the hearing of pre-trial motions (the “Motions”). The subpoena was issued by Frederick W. L. Black, who is charged with three counts of fraud contrary to *s. 380(1)(a)* of the *Criminal Code* (the “Charges”), and who has brought the Motions to stay the Charges on the basis that his rights under the *Canadian Charter of Rights and Freedoms* were violated.
- [2] Mr. Redling was Superintendent of Bankruptcy, appointed under the *Bankruptcy and Insolvency Act*, when the Office of the Superintendent of Bankruptcy (“OSB”) reviewed the administration of the Estate of NsC Diesel Power Inc., a bankrupt corporation of which Mr. Black was principal shareholder, and while the RCMP conducted an investigation which resulted in the Charges. Mr. Redling has no present association with OSB, and is now employed in the Privy Council office.
- [3] Mr. Black issued subpoenas to five employees or ex-employees of the OSB - Mark Mayrand, Charles Walker, Ron Twohig, and Maureen Brocklehurst, as well as Mr. Redling. Written briefs were received and extensive oral argument presented October 24th and 25th in support of motions to quash the five subpoenas.
- [4] On October 25th, I dismissed the Application to quash the subpoena issued to Mark Mayrand, who was Assistant Superintendent of Bankruptcy during Mr. Redling’s tenure as Superintendent, finding it likely that Mr. Mayrand had material evidence to give in relation to whether Mr. Black’s rights pursuant to the *Canadian Charter of Rights and Freedoms* had been violated. In oral reasons for judgment, I noted that the relevance and materiality tests set out in *R. v. Deveau* [1995] N. S.J. No. 186 (S.C.) and *R. v. Gingras* (1992), 71 C.C.C. (3d) 53 (Alta. C.A.) were met with respect to the OSB generally and

Mr. Mayrand's anticipated evidence in particular. I was also satisfied that Mr. Black had established that Mr. Mayrand was likely able to provide evidence which would be of sufficient probative value in relation to the cost to the judicial process to warrant his attendance. Pending hearing Mr. Mayrand's evidence and reviewing documents to be provided pursuant to the subpoena issued to him, I adjourned decision with respect to the applications to quash the subpoenas issued to other OSB personnel, including Mr. Redling.

- [5] After Mr. Mayrand gave evidence, I determined on November 29th, 2001 that it was unlikely Mr. Twohig and Ms. Brocklehurst could provide relevant material evidence, and I quashed the subpoenas issued to them. At the same time, I dismissed the Application to quash the subpoena issued to Mr. Walker, and further adjourned the motion with respect to the subpoena to Mr. Redling. Prior to deciding whether to quash that subpoena, I wished to hear evidence from RCMP Superintendent Kaine, with whom it was suggested Mr. Redling may have met in connection with investigations which led to the Charges. Superintendent Kaine's testimony has now been completed.
- [6] I have decided to quash the Subpoena issued to Mr. Redling. In doing so, I have applied the same tests upon which I determined on November 29th that the subpoenas issued to Mr. Twohig and Ms. Brocklehurst should not stand.
- [7] Mr. Black has not established that Mr. Redling is likely to be able to provide material or relevant evidence with respect to the issues which the Motions raise. Mr. Mayrand dealt with matters at the OSB's Ottawa office which may also have involved Mr. Redling, and Mr. Mayrand has testified concerning activities at the OSB which relate to investigation respecting Mr. Black. He has also provided copies of and evidence concerning correspondence and other documentation in the OSB files, including materials generated by Mr. Redling.
- [8] Mr. Walker is scheduled to testify concerning any involvement of OSB's Halifax office respecting investigation of Mr. Black's activities.
- [9] There is no evidence that Mr. Redling participated in any meetings with the RCMP. Although there is correspondence between the OSB and RCMP relating to scheduling of a meeting between Mr. Redling and Superintendent Kaine, it was Superintendent's Kaine's evidence, which appeared to be based on a clear recollection, that no such meeting occurred.
- [10] I am not convinced on the balance of probabilities that it is likely that Mr. Redling would have any material or relevant evidence to provide. The

involvement of the OSB concerning matters relevant to the issues raised by the Motions has been fully canvassed during testimony of other witnesses, and it is very unlikely that Mr. Redling could add anything.

- [11] I have also considered the proportionality argument raised on Mr. Redling's behalf. Although it is not necessary to decide the Application on that basis, I am satisfied that the difficulties associated with Mr. Redling's attendance would be entirely disproportional to any very marginal benefit which might possibly result from his testifying. Mr. Redling has not been associated with the OSB for several years, he would have to go to substantial effort to review materials which have been thoroughly canvassed during Mr. Mayrand's evidence, and he would have to come to Halifax from Ottawa. The involvement of the OSB in all matters relevant to the issues arising from the Charter motions can be fully assessed without the attendance of Mr. Redling, and if a proportionality test were applied, requiring his attendance would not be warranted.
- [12] The subpoena issued to Mr. Redling is quashed.

J.