SUPREME COURT OF NOVA SCOTIA
Citation: *Landry v. HMK*, 2023 NSSC 284

Date: 20230901
Docket: 513688
Registry: Antigonish

Between:

Theresa Lorraine Landry

Appellant

v.

His Majesty the King

Respondent

Judge:	The Honourable Justice Frank P. Hoskins
Heard:	August 5th and November 1st, 2022, and March 7th, 2023, in Antigonish, Nova Scotia
Decision:	September 1st, 2023
Counsel:	Theresa Lorraine Landry, self-represented, Appellant Courtney MacNeil, for the Respondent

By the Court:

Introduction

[1] On August 20, 2021, the Appellant, Ms. Landry, was issued a summary ticket under section 3(1)(e) of the *Protection of Property Act*, R.S.N.S. 1989, c. 363 ("the *PPA*"), for driving across her neighbor, Mr. Meisner's, front law on an all-terrain vehicle ("ATV") after having been orally served with a *PPA* notice by Mr. Meisner 27 days earlier.

[2] Ms. Landry was convicted by Justice of the Peace Bruce McLaughlin on February 24, 2022. He convicted her of a violation of section 3(1)(b) of the *PPA*. Ms. Landry appeals her conviction. There was a dispute between the parties as to the ownership of the property over which the Appellant crossed, For ease of reference, I will refer to the disputed area as "the property" or "the property at issue," and the area that is uncontroversially owned by Mr. Meisner as "Mr. Meisner's property."

Positions of the Parties

The Appellant's Position

[3] The Appellant alleges that the Justice of the Peace made the following errors:

- She was convicted under section 3(1)(b) for entering a Christmas tree plantation but received the summary ticket for breaching section 3(1)(e);
- The Justice of the Peace erroneously relied on a pin in the ground on Mr. Meisner's property as a survey marker and accepted Crown hearsay evidence of Mr. Meisner's property lines;
- The Justice of the Peace did not allow Ms. Landry to provide a legal registered survey as evidence to determine Mr. Meisner's property lines; and
- The Justice of the Peace misinterpreted Crown photographic evidence that the Appellant says was not clear and lacked depth perception, making it impossible to tell if she was travelling on Mr. Meisner's property or on property owned by the Department of Highways and Transportation ("the Department").

[4] The Appellant says she was travelling on the Department's property, not Mr. Meisner's, and that she was not served with a protection of property notice from the Department. Therefore, she argues, she was entitled to enter the property.

The Respondent's Position

[5] The Respondent (Crown) submits that the title or ownership of the land that the Appellant crossed is irrelevant because Mr. Meisner was an occupier of that land. The *PPA* allows owners or occupiers of land to issue *PPA* notices. Mr. Meisner gave oral notice to the Appellant not to traverse the property. The Respondent argues that the Appellant could not rely on a defence of reasonable belief in justification defence, pursuant to section 5 of the *PPA*, because that defence is only applicable when the defendant has made a mistake of fact that (if true) would provide them with the authority to be on the property. The Respondent submits that the Appellant made a mistake of law, not fact, when she crossed the property because she believed that Mr. Meisner's oral notice did not apply. The Respondent submits that this position overlooks an occupier's right to issue *PPA* notices. The Respondent further submits that ignorance of the law is not a defence.

Issues

[6] The issues can be summarized as follows:

1. Was the Justice of the Peace's verdict unreasonable?

   - Did the Justice of the Peace err when he determined that the Appellant crossed Mr. Meisner's property?
   - Did the Justice of the Peace err when he determined that the Appellant did not raise a defence?
   - Did the Justice of the Peace err when he convicted Ms. Landry under section 3(1)(b) of the Protection of Property Act rather than section 3(1)(e)?
   - If the Justice of the Peace erred what effect does that have on the reasonableness of the verdict?

2. Did the Justice of the Peace commit a miscarriage of justice in his interactions with the Appellant by refusing to allow her to introduce survey evidence?

Scope of the Review

[7] Section 686 of the *Criminal Code* provides the following powers to a court hearing an appeal:

686. (1) On the hearing of an appeal against a conviction ... the court of appeal

(a) may allow the appeal where it is of the opinion that

(i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
(iii) on any ground there was a miscarriage of justice;

(b) may dismiss the appeal where

(i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment,
(ii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a),
(iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (a)(ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred, or
(iv) notwithstanding any procedural irregularity at trial, the trial court had jurisdiction over the class of offence of which the appellant was convicted and the court of appeal is of the opinion that the appellant suffered no prejudice thereby; ...

[8] In essence, the Appellant has alleged that the Justice of the Peace made errors of mixed fact and law and misapprehended the evidence in finding that the Appellant crossed Mr. Meisner's property. She also alleges that the Justice of the Peace erred in law when he convicted her under section 3(b) of the *PPA.* Finally, she argues that by refusing to admit the survey evidence she proffered, and by accepting the Crown's evidence of Mr. Meisner's property lines, the Justice of the Peace committed a miscarriage of justice.

[9] In *R. v. Nickerson*, 1999 NSCA 168, Cromwell, J.A., writing for the Court, summarized the principles governing the scope of appeal before the Summary Conviction Appeal Court:

> [5] Unlike appeals to this Court in summary conviction matters, appeals to the Summary Conviction Appeal Court on the record may address questions of both fact and law. Hallett, J.A., for the Court, recently described the role of the Summary Conviction Appeal Court judge in **R. v. Miller** (1999), 173 N.S.R. (2d) 26 (C.A.) at pp. 27-29:
>
> > On an appeal to a summary conviction appeal court (in this Province, the Supreme Court of Nova Scotia), from a summary conviction, on the ground that the verdict is unreasonable or unsupported by the evidence, the duty of the Supreme Court judge as an appellate court is explained in **Yebes v. The Queen** (1988), 36 C.C.C. (3d) 417. McIntyre, J., for the Court, stated at p. 430:
> >
> > > .....The function of the Court of Appeal, under s. 613(1)(a)(i) of the *Criminal Code*, goes beyond merely finding that there is evidence to support a conviction. The court must determine on the whole of the evidence whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. While the Court of Appeal must not merely substitute its view for that of the jury, in order to apply the test the court must re-examine and to some extent reweigh and consider the effect of the evidence. The process will be the same whether the case is based on circumstantial or direct evidence.

[Emphasis in *Miller*]

.....

> On an appeal from a conviction for a criminal offence on the ground that the guilty verdict is unreasonable, the appellate court judge is required to review, and to some extent, reweigh the evidence to determine if the verdict is unreasonable. Assessing whether a guilty verdict is unreasonable engages the legal concept of reasonableness (**Yebes, supra** at p. 427). Thus, the appellate review, on the grounds set out in s. 686(1)(a)(i) of the **Code** entails more than a mere review of the facts. The appellate court has a responsibility, to some extent, to do its own assessment of the evidence and not to automatically defer to the conclusions of the trial judge which is what the appellate court judge seems to have done in this appeal.
>
> [6] The scope of review of the trial court's findings of fact by the Summary Conviction Appeal Court is the same as on appeal against conviction to the Court of Appeal in indictable offences: see sections 822(1) and 686(1)(a)(i) and **R. v. Gillis** (1981), 60 C.C.C. (2d) 169 (N.S.S.C.A.D.) per Jones, J.A. at p. 176. Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada in **R. v. Burns**, [1994] 1 S.C.R. 656 at 657, the appeal court is entitled to review the evidence at trial, re-examine and reweigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was some evidence to support the trial judge's conclusions nor a new trial on the transcript.

[10] Similarly, in *R. v. Prest*, 2012 NSCA 45, where Farrar, J.A., writing for the court, noted that "a summary conviction appeal on the record is just that, an appeal": para. 32. In *R. v. Farrell,* 2009 NSCA 3, Roscoe, J.A. held that a summary conviction appeal judge can re-examine and re-weigh evidence but only for the purpose of determining if the evidence presented was reasonably capable of supporting the trial judge's conclusion: para. 13. In *R v Francis*, 2011 NSCA 113, Fichaud, J.A., writing for the court, affirmed the summary conviction appeal judge's reasons for affirming the trial decision. The summary conviction appeal judge had noted:

> [58] …the role of the Summary Conviction Appeal Court is not to simply substitute its' view of the evidence for that of the trial judge. Rather, the question is whether, after reviewing the admissible evidence, it can be concluded that it is reasonably capable of supporting the conclusions of the trial judge, properly directed and acting judicially.
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> [Quoted in *Francis* at para. 14]

[11] Justice Gatchalian discussed the test for misapprehension of evidence in *R v Levy*, 2023 NSSC 23:

> [10] …There is a stringent test for finding a misapprehension of evidence resulting in a miscarriage of justice:
>
> 1. First, the misapprehension of evidence must go to the substance of the decision rather than to the details of it, and it must be material rather than peripheral to the reasoning; and
> 2. Second, the errors must play an essential part not just in the narrative of the judgment but in the reasoning process resulting in the conviction.
>
> …
>
> [11] A misapprehension of evidence may consist of:
>
> - a failure to consider evidence relevant to material issue,
> - a mistake as to the substance of the evidence, or
> - a failure to give proper effect to evidence.

[12] Errors of law are subject to a correctness standard of review: *McIntosh v. Halifax (Regional Municipality)*, 2017 NSSC 326, [2017] NSJ No 49, at para. 19.

Was the Verdict Unreasonable?

Did the Justice of the Peace err when he determined the Appellant was on Mr. Meisner's property?

[13] The Justice of the Peace determined the property lines of Mr. Meisner's property based on testimony from Mr. Meisner. He did not accept, as the Appellant contends, hearsay evidence regarding the property lines. The pin in the ground was visible from photos that were marked as exhibits for the court.

[14] Mr. Meisner testified that his property began directly after the shoulder of the road, when referred to pictures entered into evidence by the Crown: transcript, p. 14, line 16 and p. 17, lines 4-6. Mr. Meisner also testified that he was told that the Department had an easement over the land from the shoulder of the road into the bushes, but that he still owned the land: transcript p. 22, lines 14-20. During the trial the court reviewed Property Online, a database that details easements and other entitlements on properties in Nova Scotia, and determined that there was no easement recorded over Mr. Meisner's property. The court also noted that there was no separately registered property between Mr. Meisner's property and the highway: transcript, p. 33, lines 16-22.

[15] The Appellant argues that the Justice of the Peace accepted the Crown's submission that expert evidence was not required to establish Mr. Meisner's boundary lines. However, he held that an expert was required to introduce the Appellant's survey of her own property. The Justice of the Peace accepted Mr. Meisner's testimony regarding a survey pin on his property as evidence of his

property line. There is a distinction between the evidence that the Justice of the Peace accepted from the Crown and what he refused to admit from the Appellant. The Crown submitted photographic evidence of Mr. Meisner's property line This evidence was not complicated; the Justice of the Peace found that the survey pin on Mr. Meisner's property was clear and obvious and did not require an expert to testify about the implication of a survey marker. On the other hand, the Appellant was attempting to have the court draw an inference from a survey about the location of property lines at the front of Mr. Meisner's property. The Justice of the Peace held that this would be a technical argument that would require an expert opinion.

[16] While there was some evidence that could support a different conclusion regarding the ownership of the property at issue, the trial transcript reveals that the Justice of the Peace considered the totality of the evidence and reached a conclusion that could reasonably be supported. Thus, I am satisfied that the Justice of the Peace did not commit reversible error in finding that the Appellant was on Mr. Meisner's property.

[17] Furthermore, as I will discuss below, when determining the guilt of the Appellant it does not matter whether Mr. Meisner was the owner of the property or if the Department was, because he occupied the property.

Was Mr. Miesner an Occupier of the Property at Issue?

[18] The *PPA* is not limited to providing owners of property with the right to serve notice. It also provides occupiers the same rights. If Mr. Meisner was an occupier of the property, he was entitled to give Ms. Landry notice under the *PPA*. The ultimate ownership of the property, whether by Mr. Meisner or the Department, was not relevant. The word "occupier" is defined in section 2(b) of the *PPA*:

> "occupier" includes
>
> (i) a person who is in possession of premises, or
>
> (ii) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises
>
> notwithstanding that there is more than one occupier of the same premises;

[19] Section 3 of the *PPA* states, in part:

> **Entry or certain activity on premises**
>
> **3 (1)** Every person who, without legal justification, whether conferred by an enactment or otherwise, or without the permission of the occupier or a person authorized by the occupier, the proof of which rests upon the person asserting justification or permission,
>
> ...

> (b) enters on premises that is apparently a tree plantation area or a Christmas tree management area;
>
> ...
>
> (e) enters on premises where entry is prohibited by notice; or
>
> ...
>
> is guilty of an offence and on summary conviction is liable to a fine of not more than five hundred dollars.
>
> **(2)** A notice under this Section may be given orally or in writing.
>
> **(3)** Where the notice in writing is by means of a sign, the sign shall be posted so that it is clearly visible in daylight under normal conditions from the approach to each usual point of access to the premises to which it applies.
>
> **(4)** A notice under this Section may be given in respect of any part of the premises of an occupier.
>
> …

[20] In *R v Marcocchio*, 2002 NSPC 7, Ross, Prov. Ct. J. commented on the legislative intent behind the *PPA*:

> [28] … Others concerned were rural land owners, whose wood lots, and farms were subject to continuing trespass by snowmobilers and other forms of recreation. It appears the Bill was thus intended to address the mercantile interests of mall owners and recreational parks, and the privacy interests of rural land owners. …

[21] In the case at bar, the area in question runs from the shoulder of the road through a ditch and a patch of bushes or small trees. Mr. Meisner testified that there were once trees along the edge of the property but they were cut down by the Department. He further stated that the bushes grew up in their place and that he kept them because he liked the noise dampening that the bushes provided: transcript, p. 13, lines 15-19.

[22] This testimony included evidence that Mr. Meisner had some level of control over the property, leading to the inference that if not the owner, he was at least the occupier of the property. This was an available reasonable inference, given Mr. Meiser's use of the property and his decision to park his trailer near the front of his property. When using the trailer, Mr. Meisner could observe and traverse the property. The property was connected to another property he owned, and there was evidence that he treated the property as if he owned it, for instance, by allowing the bushes to grow in front of his trailer and cottage rather than cutting them down. Mr. Meisner's treatment of the property was evidence of control within the meaning of the *PPA*.

[23] For these reasons the evidence before the Justice of the Peace supported the conclusion that Mr. Meisner was an occupier and had the authority to provide notice to the Appellant not to enter the property. In noting this, I am mindful that

this Court cannot substitute its own findings for the Justice of the Peace's finding that the Appellant was on Mr. Meisner's property. However, I address this issue because it has been argued on appeal. Even if the Justice of the Peace erred in finding that Mr. Meisner owned the property at issue, his verdict was nonetheless supportable on the basis that Mr. Meisner was an occupier.

Did the Justice of the Peace err in holding that the Appellant did not raise a Defence?

[24] The trial transcript includes evidence that the Appellant, Ms. Landry, believed she had a right to cross the property because she believed it was owned by the Department. The Justice of the Peace stated that she did not establish a defence to the charge. Her stated defence was based on her belief that the property was not owned by Mr. Meisner and that she had the right to cross the property because she did not receive a *PPA* notice from the Department. Evidently, she did not believe Mr. Meisner had authority to issue the notice based on her own belief that he did not own it.

[25] Section 5(1) of the *PPA* makes it a defence to charge under section 3:

> … that the person charged reasonably believed that he had legal justification, or permission of the occupier or a person authorized by the occupier, to enter on the premises or to do the act complained of.

[26] Justice Boudreau, in *R v Kure*, 2022 NSSC 309, commented on the justification defence:

> [38] Section 5(1) of the *Act* provides a defence where a person reasonably believes that they have a legal justification to be on a property. Put another way, this defence is aimed at a mistake of fact: where a person believes, on articulated and reasonable grounds, that they had authority or permission to be where they were.

[27] The evidence at trial was that Ms. Landry knew that she had been served a *PPA* notice and believed it was not valid because she was on the Department's property. The Respondent asserts that this is a mistake of law. Mistake of law was discussed by Ottenbreit, J., writing for the court, in *R v Allaby*, 2017 SKCA 25, who noted:

> [42] The governing law respecting the characterization of the mistake is set out in *R v MacDonald*, 2014 SCC 3, [2014] 1 SCR 37 [*MacDonald*], and *R v The Star Phoenix 911909*, 2003 SKCA 108 at para 27, [2004] 3 WWR 639. An accused who erroneously believes that his voluntary action does not contravene a legal order or who is mistaken about the application of a legal order is mistaken in law.

[28] If Mr. Meisner was an occupier of the property, even if it was owned by the Department, he would still have the authority to prohibit Ms. Landry from crossing the property. This issue then becomes a question of interpretation of the word

"occupier." In this way, the case at bar is analogous to *Allaby*, in that the accused was mistaken about the application of legal order:

> [44] The trial judge made the same error as the lower court made in *MacDonald*, i.e., requiring the Crown to prove that the accused knew the law or was wilfully blind to the law. Mr. Allaby was not mistaken about what he had done. He was clearly aware that he was bound by two court orders that prohibited him from attending a community centre where children under 16 years and 14 years of age respectively were either present or could reasonably be expected to be present. He deliberately chose to go to the RPL. On the evidence presented at trial, Mr. Allaby was mistaken about the ambit of the term "community centre" and the legal consequences of his actions. Such a mistake was one of law and could not operate as a defence and negate his intention to commit the offences save in the case of officially induced error. The trial judge erred in determining that his mistake was a defence given the evidence before him.
>
> [Emphasis added]

[29] For these reasons, I agree with the Respondent's position that the Appellant was mistaken in law if she thought that Mr. Meisner's *PPA* notice did not apply to the property that she crossed. Though not expressly stated in his reasons, the Justice of the Peace correctly concluded that the Appellant did not establish a defence.

Did the Justice of the Peace err when he convicted the Appellant under section 3(b) rather than section 3(e)?

[30] The Justice of the Peace erred when he issued the ticket under section 3(1)(b) of the *PPA*. The Appellant was charged under section 3(1)(e). There was no evidence at trial that Mr. Meisner's property was a Christmas tree farm. It is clear from the record, however, that the Justice of the Peace assessed the evidence and determined guilt based on section 3(1)(e) and the prohibition therein:

> **3 (1)** Every person who, without legal justification, whether conferred by an enactment or otherwise, or without the permission of the occupier or a person authorized by the occupier, the proof of which rests upon the person asserting justification or permission,
>
> ...
>
> (e) enters on premises where entry is prohibited by notice; or
>
> ...
>
> is guilty of an offence and on summary conviction is liable to a fine of not more than five hundred dollars.

[31] I am satisfied that this ground of appeal can be dismissed under section 686(1)(b)(iii) of the *Criminal Code* on the basis that "no substantial wrong or miscarriage of justice has occurred..."

[32] Alternatively, the appeal could be dismissed under section 686(1)(b)(i) on

the ground that:

> … the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment, …

In the latter case, the appeal court may substitute the correct verdict and impose sentence, or remit the sentence to the trial court: s 686(3)(b). This court should substitute the verdict from guilty of section 3(b) to section 3(e) and (given that the penalty is the same for both offenses) affirm the sentence imposed by the Justice of the Peace.

Should the Appellant's Motion for Fresh Evidence be Admitted?

[33] The Appellant has submitted a motion for fresh evidence, seeking to introduce the survey of her property that she was not permitted to introduce at trial without an expert.

[34] In *Prest*, Farrar, J.A. held that it would be inappropriate for a judge on a summary conviction appeal to consider fresh evidence as that would invite the judge "to embark on a review of the evidence and substitute his view for that of the trial judge" holding that this goes beyond the scope of an appellant court's role: para. 37.

[35] In *R. v. Palmer*, [1980] S.C.R. 759, McIntyre, J., writing for the court, discussed the issue of new evidence on appeal. He noted, at pp. 776-777, that a court considering admitting evidence that was not available during trial should consider the following:

> Firstly, is the evidence possessed of sufficient credibility that it might reasonably have been believed by the trier of fact? If the answer is no that ends the matter but if yes the second question presents itself in this form. If presented to the trier of fact and believed, would the evidence possess such strength or probative force that it might, taken with the other evidence adduced, have affected the result? If the answer to the second question is yes, the motion to adduce new evidence would have to succeed and a new trial be directed at which the evidence could be introduced.

[36] The Appellant was unaware that she would need an expert to introduce her evidence, and was not permitted an adjournment to find an expert. The Respondent argues that the *Palmer* criteria generally requires the Appellant to establish that the evidence would not have been available at trial even with the exercise of due diligence. However, they note that this standard is relaxed in criminal trials and that, even with due diligence, the Appellant, being a self-represented litigant, may not have known she needed to provide her evidence via an expert. I agree that this element of the *Palmer* criteria should not act as a bar to the Appellant introducing fresh evidence.

[37] Having been instructed on the need for expert evidence, the Appellant now seeks to introduce the survey accompanied by an affidavit of the surveyor. I accept that this evidence could meet the first part of the *Palmer* test, having sufficient credibility that it could be believed by the trier of fact.

[38] The second *Palmer* criterion requires this court to consider if the proposed evidence could have affected the result of the trial. The Appellant argues that this evidence will help her establish that she was driving on the Department's property, not Mr. Meisner's. Since the Justice of the Peace could convict on the basis that Mr. Meisner was the occupier of the property, the exact parameters of his property are not relevant. Accordingly, Ms. Landry's survey would not affect the result and fails to meet the *Palmer* criteria.

[39] For these reasons, the Appellant's motion for fresh evidence should be denied.

Did the Justice of the Peace Commit a Miscarriage of Justice when Addressing the Appellant's submissions?

[40] The Appellant was a self-represented litigant who was unfamiliar with the workings of the justice system. She was unaware of her need to call an expert to introduce the survey evidence. The Justice of the Peace refused to grant an adjournment to allow her to find an expert to introduce her evidence.

[41] In *R. v. Taylor* (1995), 142 N.S.R. (2d) 382, the Court of Appeal ordered a new trial because the trial judge had refused to grant an adjournment to allow the accused to seek legal counsel. Though the court noted that the judge had discretion to refuse an adjournment, Pugsley JA, writing for the court, held that it was unreasonable in the circumstances for the trial judge not to inquire why the accused had delayed seeking counsel. Furthermore, the accused had difficulties with cross-examination and did not seem to understand the difference between questioning and giving evidence. In determining that the trial judge did not adequately assist the accused, Pugsley JA. noted:

> [28] Every trial should be conducted in a fair and impartial manner, giving the accused sufficient opportunity to make full answer and defence. Every trial, viewed in a reasonable perspective, must appear to meet this standard.
>
> [29] In my respectful opinion, after a review of the totality of this proceeding, this trial does not meet the standard (*R. v. Campbell* (1981), 49 N.S.R. (2d) 307).
>
> [30] The comments of Lamer, J. on behalf of the Court in *Brouillard v. The Queen* (1985) 17 C.C.C. (3d) 193 at p. 195 are particularly apposite:
>
> > The role of a trial judge is sometimes very demanding, owing to the nature of the case and the conduct of the litigants (parties). Like anyone, a judge may occasionally lose patience. He may then step down from his judge's bench and assume the role of counsel. When this happens, and, *a fortiori*, when this happens to the detriment of an accused, it is important that a

> new trial be ordered, even when the verdict of guilty is not unreasonable having regard to the evidence, and the judge has not erred with respect to the law applicable to the case and has not incorrectly assessed the facts.
>
> The reason for this is well known. It is one of the most fundamental principles of our case-law, the best-known formulation of which is to be found in Lord Hewart C.J.'s judgment in *R. v. Sussex Justices, Ex. p. McCarthy* [1924] 1 K.B. 256 at p. 259: "[it] is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

[42] The Justice of the Peace expressly noted during the trial that he was trying to afford the Appellant with some leniency during her cross-examination of witnesses, understanding that she was a self-represented litigant: transcript, p. 30, lines 7-9. At times during her cross-examination of witnesses the Justice of the Peace asked the Appellant to clarify her questions. The Justice of the Peace also explained to the Appellant that in order to explain her case she would need to give evidence to the court. He told her that she would need to be sworn as a witness to give her evidence. These actions are a part of the trial court's supervisory role and did not create an unfair trial.

[43] Furthermore, in determining whether to allow the Appellant to introduce the survey, the Justice of the Peace asked questions about the relevance of the survey and why she was seeking to introduce it. Based on her answers to those questions he determined that the evidence was not relevant because the survey was done on her property and may only provide "anecdotal evidence that is not conclusive": transcript, p. 65, line 13. Because of this, and because the Appellant did not call the surveyor as a witness, he declined to admit the survey as evidence. The Justice of the Peace did not do what the court in *Taylor* said was impermissible, which is to make a discretionary ruling without making proper inquiries. Instead, the Justice of the Peace made sufficient inquiries about the proposed evidence to determine if it should be admitted.

Conclusion

[44] The evidence before the Justice of the Peace was that the Appellant traversed land that was either owned or occupied by Mr. Meisner and that Mr. Meisner had previously provided the Appellant with oral notice not to enter this land. The Justice of the Peace found that the land at issue was owned by Mr. Meisner. The Appellant disputes this finding, asserting that the land was owned by the Department. As I have noted above, the ownership of the land is not determinative of the Appellant's guilt. Regardless of whether the land was owned by Mr. Meisner, the evidence before the Justice of the Peace supported a finding that it was occupied by him. As such, I am satisfied that the Justice of the Peace's verdict is reasonable and supported by the evidence.

[45] The Justice of the Peace did err when identifying the section of the *PPA* that the Appellant contravened. For the reasons stated above, I am satisfied that this was a harmless error and that it is appropriate to substitute a sentence pursuant to section 686(3)(b).

Hoskins, J.