

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, 2002, NSSC 26 ]

**HER MAJESTY THE QUEEN**

**against**

**FREDERICK WILLIAM LOGAN BLACK**

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**D E C I S I O N**

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**HEARD:** Before the Honourable Justice John D. Murphy, Supreme Court of Nova Scotia, at Halifax, Nova Scotia, on December 17, 2001.

**DECISION:** December 17, 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] Frederick Black has been charged with three counts of fraud, contrary to *s. 380(1)(a)* of the *Criminal Code*, relating to his activities as president and principal shareholder of NsC Diesel Power Inc. (“NsC”), a bankrupt corporation. Mr Black has brought motions (the “Charter Motions”) seeking a stay of those charges on the basis that his rights under the Canadian Charter of Rights and Freedoms were violated by the Office of the Superintendent of Bankruptcy (“OSB”) and by the R.C.M.P. during investigations of his activities and of the administration of the NsC bankruptcy. The present Application is made by Mr. Black seeking an Order compelling George Redling, who was Superintendent of Bankruptcy while those investigations were being conducted, to testify at the hearing of the Charter Motions.
- [2] This Court has already considered whether Mr. Redling should testify, and on December 4, 2001 quashed a subpoena (the “Subpoena”) which Mr. Black had served directing his attendance to give evidence at the Charter Motions hearing. The reasons which I provided when giving that decision canvassed the involvement of Mr. Redling and other persons in the OSB in relation to Mr. Black’s affairs, and explained the basis upon which I determined that Mr Redling was unlikely to be able to provide relevant or material evidence concerning issues raised by the Charter Motions.
- [3] After the Subpoena was quashed, Mr Black presented additional testimony from RCMP officers and evidence from Charles Walker, who was a senior official in the Halifax Office of the OSB during Mr. Redling’s tenure. Mr. Black now suggests that the evidence which those witnesses gave and the documents to which they referred raise issues which warrant compelling Mr. Redling’s attendance. The present application could be characterized as a request for re-consideration of the decision to quash the Subpoena, in light of additional information which Mr Black says has become available during subsequent testimony and from the documents which have now been provided.
- [4] After reviewing the Notice of Motion and Mr. Black’s affidavit, and hearing representations from Mr. Black, from Mr. Clarke on behalf of Mr. Redling, and from Mr. Holt, I have decided to dismiss the Application to require Mr. Redling’s attendance, and no subpoena will be issued to him.

- [5] Mr Black has not met the onus which rests upon him to satisfy the Court on the balance of probabilities that Mr. Redling has relevant or material evidence to give concerning the issues raised by the Charter Motions. The testimony and documentation presented since the Subpoena was quashed do not provide any basis to compel his attendance.
- [6] Mr. Black referred particularly to the last two pages of Exhibit 156, handwritten notes which have been attributed to Mr. Redling. One page is dated “September 30<sup>th</sup>” and it has been assumed the reference is to that date in 1993, during the period when Charles Piper was investigating the administration of the bankruptcy of NsC for the OSB. In Paragraph 11 of his affidavit in support of the application, and also during argument, Mr. Black suggested that those notes indicate an attempt by Mr. Redling to influence the form and content of the report provided by Mr. Piper, which led to the R.C.M.P. investigation into Mr. Black’s conduct. Several witnesses have given very detailed evidence concerning the activities of the OSB and the R.C.M.P., and there is neither testimony nor anything apparent in the notes to support Mr. Black’s interpretation. Mr. Black has also scheduled Mr. Piper to testify during the Charter Motions hearings, and will have an opportunity to explore any factors which influenced that report directly with Mr. Piper.
- [7] In his supporting affidavit Mr Black also expressed beliefs that Mr. Redling’s motives and conduct were improper, particularly in covering up alleged wrongdoings by Ernst and Young and encouraging overzealous investigating of his conduct. Mr. Black suggests that the OSB, under Mr Redling as Superintendent, did not pursue investigations into other parties with sufficient vigor, and that Mr. Redling somehow dissuaded the RCMP from investigating other parties’ conduct and deflected suspicion of wrongdoing to him.
- [8] Nothing which has come before the Court since the Subpoena was quashed (or at any time) supports those beliefs expressed by Mr. Black. No likelihood has been established that Mr. Redling will provide any evidence concerning the investigation into the conduct of any other party which would be relevant or material to the issues raised by to the Charter Motions. The Court’s concern is about the investigation into the conduct of Mr. Black, and it has not been established that any lack of vigorous investigation into activities of other persons involved in the NsC bankruptcy is likely to have affected Mr. Black’s rights with respect to the charges against him.

- [9] Mr. Black also raises the issue of possible OSB funding of the investigation and/or prosecution of charges against him; however, there is no basis to find that Mr. Redling is likely to provide any additional insight into that issue.
- [10] The RCMP officers involved have testified that they were not influenced by Mr. Redling or by anyone else in the OSB in the course of their investigation into the activities of Mr. Black. Mr. Mayrand and Mr. Walker from the OSB have also given evidence that they did not influence the R.C.M.P., and I am not satisfied on the balance of probabilities that Mr. Redling is likely to have any additional information concerning that issue.
- [11] I am not convinced that Mr. Redling is likely to have any relevant or material evidence to provide with respect to the Charter Motions; I have reached that conclusion based on the information and submissions concerning his involvement in the investigations which have been provided during this application, and also based on all the evidence given during the Charter Motions' hearings.
- [12] The Application is accordingly dismissed.

J.