

**IN THE SUPREME COURT OF NOVA SCOTIA**

Citation: R. v. Finck et al. - 2005 NSSC47

Date: 20050301

Docket: CR. No.228086

Registry: Halifax

Between:

**Her Majesty the Queen**

-and-

**Lawrence Ross Finck and Carline VandenElsen**

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** February 11 and 28, 2005 at Halifax, Nova Scotia

**Oral Decision:** March 1, 2005

**Written**

**Decision:** March 7, 2005

**Subject:** Validity of preferred indictment - s.574(1)(b) of the **Criminal Code**.

**Summary:** Following a preliminary inquiry, which had taken a very unusual turn of events when the judge restricted the Crown from calling further evidence in support of additional charges on which it sought committal for trial (after the accused had both consented to committal part way through the proceeding only on the charges contained in the existing Information), the Crown laid a preferred indictment under s.574(1)(b) of the Code. In it, the Crown laid two additional firearms charges against the first named accused and seven additional firearms charges against the second named accused. These charges arose out of an armed standoff with police on May 18-21, 2004 at a Halifax residence after the police sought to execute a child apprehension

order. Defence counsel, once retained, brought an application to quash the preferred indictment, either in respect of the additional charges laid, or in its entirety.

**Issues:**

- (1) Did the Crown properly exercise its authority under the Code in preferring the indictment in this case, and
- (2) Did the preferment of the indictment in the circumstances of this case work an unfairness to the accused, constituting an abuse of process.

**Summary:** Section 574(1) of the Code authorizes the Crown to prefer an indictment not only on the charge upon which the accused has been ordered to stand trial, but on any charge founded on the facts disclosed by the evidence taken at the preliminary inquiry (provided there is a close connection between the charge investigated and the additional charge). Unusual as it was for a trial judge to be placed in a situation of having to assess that evidence where the preliminary inquiry judge had not fully done so, the court was satisfied that the evidence taken at the preliminary inquiry was sufficient to warrant the laying of the additional charges. In reaching that conclusion, the court applied the test of whether there was any evidence taken on the inquiry upon which a reasonable jury, properly instructed, could convict.

On the second issue, the decision to prefer an indictment involves the exercise of prosecutorial discretion. Courts will generally not interfere with that discretion unless exercised in bad faith in which case it can be challenged as an abuse of process in a stay of proceedings application. In the present case, there was nothing whatsoever to lead the court to conclude that the Crown had acted in bad faith or under improper motives in preferring the indictment as it did. Despite the unusual twists in this case, the defence were unable to establish any bad faith or unfairness on the part of the Crown that would impair the fair trial rights of the accused or bring the administration of justice into disrepute. The application to quash the preferred indictment was therefore dismissed.

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