NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cummings*, 2023 NSCA 85

Date: 20231130
Docket: CA 519289
Registry: Halifax

Between:

Wanda Cummings

Appellant

v.

His Majesty the King

Respondent

Judge:	The Honourable Justice Anne S. Derrick
Appeal Heard:	October 19, 2023, in Halifax, Nova Scotia
Subject:	Judicial review for *certiorari* and prohibition in relation to criminal charges before the Provincial Court of Nova Scotia. *Civil Procedure Rules* 64.03 and 7.05. Vexatious litigant. Parliament's exclusive jurisdiction over criminal law and procedure. s. 784 of the *Criminal Code*.
Summary:	The appellant filed a Notice of Judicial Review in the Supreme Court of Nova Scotia for *certiorari* and prohibition in relation to criminal charges proceeding through the Provincial Court of Nova Scotia. She spuriously claimed the Provincial Court had no jurisdiction over her or the offences with which she was charged. The motions judge found her Notice was filed out of time and dismissed it. She appealed from the dismissal. She had unsuccessfully sought judicial review in the past in very similar circumstances and had failed to obtain relief via appeal. The respondent brought a motion to have the appellant declared a vexatious litigant in this Court.

Issues:

(1) Did the motions judge correctly interpret the *Civil Procedure Rules* when he dismissed the appellant's Notice of Judicial Review?

(2) Can the appellant be declared a vexatious litigant in this Court where the matter originates from criminal proceedings?

Result:

Appeal dismissed. The respondent's motion to have the appellant declared a vexatious litigant in this Court is dismissed. The appellant's Notice of Judicial Review was brought pursuant to Part XXVI of the *Criminal Code* and *Civil Procedure Rule* 64. CPR 64.03(3) provides that certain provisions of *CPR* 7 are applicable, including *CPR* 7.05. *Rules* 64.03(2) and 7.05 stipulate the time requirements for filing a notice. The motions judge was correct in his interpretation of the *Rules* and his determination the appellant had filed her Notice out of time. The appellant's other grounds of appeal were wholly without merit.

The Court of Appeal has inherent jurisdiction to control its own processes but is otherwise a statutory court. The appellant's appeal was a criminal matter, regulated as a matter of procedure by the *Criminal Code* and the *Nova Scotia Civil Procedure Rules*. There is no authority in the *Judicature Act*, R.S., c. 240 or the *Civil Procedure Rules* that would allow for the circumvention of the doctrine of separation of powers and Parliament's exclusive jurisdiction under s. 91(27) of the *Constitution Act, 1867* over criminal law and procedure. That exclusive jurisdiction and the appellant's statutory right of appeal under the *Criminal Code* precluded this Court granting the respondent's motion.

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Respondent

Judges:	Bourgeois, Derrick, Beaton, JJ.A.
Appeal Heard:	October 19, 2023, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons for judgment of Derrick, J.A.; Bourgeois and Beaton, JJ.A. concurring. Respondent's Motion dismissed, per reasons for judgment of Derrick, J.A.; Bourgeois and Beaton, JJ.A. concurring.
Counsel:	Wanda Cummings, appellant in person Mark A. Scott, K.C., for the respondent

Reasons for judgment:

Introduction

[1] Wanda Cummings appeals her failed application for judicial review. On October 26, 2022, in an oral decision on a motion for Date and Directions, Justice Scott Norton of the Nova Scotia Supreme Court, dismissed Ms. Cummings' application for *certiorari* and prohibition in relation to criminal charges then proceeding through the Provincial Court of Nova Scotia. Justice Norton found Ms. Cummings' Notice of Judicial Review was out of time: she had filed it on October 5, 2022, more than 25 days after the decisions she was attacking. He noted the dates: April 25, 2019; November 12, 2019[1]; December 28, 2019; December 30, 2019; December 7, 2021; and August 11, 2022 and that each decision, with the exception of August 11, was made in Ms. Cummings' presence.

[2] Ms. Cummings' Notice of Judicial Review was filed on October 5, 2022. I have attached it as Appendix "A" to these reasons. Invoking *Civil Procedure Rule* 7.05, Justice Norton held:

> …In my view, the decisions to be reviewed as listed in the Notice of Judicial Review are beyond the time limits required by the *Rules*, and accordingly this Court does not have the jurisdiction to entertain them. And accordingly, the Notice of Judicial Review is dismissed.

[3] The Provincial Court had been dealing with a number of Informations laid between April 24, 2019 and May 29, 2022 that charged Ms. Cummings with offences under the *Criminal Code*, mostly breaches. In her Notice of Judicial Review she sought to have the reviewing court: (1) declare that the Provincial Court of Nova Scotia had lost jurisdiction over her and the offences "for informations dating between 25 April 2019[2] and 29 May 2022"; and (2) make an order "in the nature of *certiorari* quashing all informations, warrants, undertakings, and recognizances which are null and void".

[4] In her same Notice, Ms. Cummings was also seeking *certiorari* and prohibition in relation to decisions made in the Provincial Court by Judge Brad Sarson on August 22 and September 27, 2022. Ms. Cummings had made a motion

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[1] This was a date when a two-count Information was sworn against Ms. Cummings for *Criminal Code* offences alleged to have occurred on November 6, 2019.
[2] This should be April 24, 2019.

before him to withdraw guilty pleas entered on December 7, 2021. She sought to derail the application by arguing Judge Sarson had no jurisdiction to hear it.

[5] Ms. Cummings' challenge to the Provincial Court proceedings of August 22, 2022 was also out of time under *Civil Procedure Rule* 7.05. Justice Norton did not specifically deal with whether there was a timeliness issue under the *Rules* that impacted September 27. He dismissed the Notice of Judicial Review in relation to all the decisions referenced in it.

[6] Ms. Cummings' grounds of appeal, which are contained in her Notice of Appeal attached as Appendix "B" to these reasons are entirely without merit. Justice Norton made no error in dismissing the Notice of Judicial Review. He was correct in finding the enumerated decisions between April 25, 2019 and August 22, 2022 were made more than 25 days before Ms. Cummings filed her application on October 5, 2022. As for judicial review of the decision of September 27, 2022, there is no basis on which it could succeed. Ms. Cummings' arguments about the Provincial Court's lack of jurisdiction are without any foundation in law.

[7] I will be noting that Ms. Cummings has made these same specious arguments before and had them summarily dismissed.

[8] For the reasons that follow, I would dismiss this appeal. In addition, I will address the respondent Crown's motion to have this Court declare Ms. Cummings a vexatious litigant. As I will explain, I have concluded that motion cannot succeed.

Justice Norton's Order

[9] Justice Norton's Order dismissing Ms. Cummings' Notice of Judicial Review reads:

> **UPON IT APPEARING:**
>
> 1. The Applicant filed a Notice of Judicial Review on October 12, 2022[3].
> 2. Civil Procedure Rule 7.05(1) provides that:

[3] This is an obvious typographical error. The Notice of Judicial Review was filed on October 5, 2022. It is apparent Justice Norton had the Notice before him at the hearing. He said to Ms. Cummings: "As I read your Notice, the decisions you are seeking to review are…" and he listed the dates.

a. A person may seek judicial review of a decision by filing a notice for judicial review before the earlier of the following:

b. Twenty-five days after the day the decision is communicated to the person;

c. Six months after the day the decision is made

3. The seven Decisions sought to be reviewed were all communicated to the Applicant more than 25 days before the Notice of Judicial Review was filed.

4. The matter came before the court for a Motion for Directions on October 26, 2022.

AND UPON reviewing the documents filed on behalf of the Applicant and hearing from the Applicant and counsel for the Respondent;

IT IS HEREBY ORDERED THAT:

1. The Notice for Judicial Review is dismissed as being beyond the time limit for filing under Rule 7.05.

DATED at Halifax, Nova Scotia the 2nd day of December, 2022.

[10] Justice Norton identified Ms. Cummings' failure to seek judicial review in accordance with the time limits under the *Civil Procedure Rules* as the threshold issue before him. He stated at the start of the hearing: "So the first question that arises for me, Ms. Cummings, is the timing of the filing of your Notice for Judicial Review".

[11] The context out of which Ms. Cummings' Notice of Judicial Review arose is relevant to her appeal and the Crown's motion. The relevant proceedings are summarized below.

A Summary of the Relevant Provincial Court Proceedings

[12] Ms. Cummings has an extensive history of appearances in the Provincial Court during the period of 2019 through 2023. My focus is on the dates Ms. Cummings identified in her Notice and the decisions she says were made. To reiterate, these dates are: April 25, 2019; November 12, 2019; December 28, 2019; December 30, 2019; December 7, 2021; August 11, 2022; August 22, 2022 and September 27, 2022.

[13] My description of the proceedings is taken from the record filed by Ms. Cummings in support of her appeal. The record indicates the Crown elected to proceed summarily on all Ms. Cummings' charges, giving the Provincial Court exclusive jurisdiction over them.

April 25, 2019

[14] Ms. Cummings was charged on April 24, 2019 with offences under ss. 140(1)(c) and 811 of the *Criminal Code*. The s. 811 charge was a breach of a recognizance dated May 29, 2018. On April 25, 2019 Ms. Cummings appeared in Provincial Court before Judge Frank Hoskins (as he then was) and consented to release on her own recognizance with a return date of May 28, 2019. Conditions included keeping the peace and being of good behaviour, not to consume alcohol, and not to call any emergency services unless for the purposes of a true emergency.

November 12, 2019

[15] On November 12, 2019 an Information was sworn charging Ms. Cummings with two s. 145(3) breaches of her April 25, 2019 recognizance. The offences were alleged to have been committed on November 6, 2019.

December 28, 2019

[16] Following her consent release on April 25, 2019, Ms. Cummings accumulated a series of *Criminal Code* breach charges related to her recognizance. On December 28, she was arraigned before a Justice of the Peace on two s. 145(5) breaches. The Justice of the Peace remanded her to Monday, December 30, 2019 for a show cause hearing.

December 30, 2019

[17] On December 30, Ms. Cummings appeared in Provincial Court before Judge Theodore Tax. She was represented by counsel. The Crown was opposed to her release. Ms. Cummings' counsel advised the court she had been unable to put together a release plan and was "asking to have it put over until January 10th, 2020 for a show cause". Crown counsel indicated he would be seeking bail revocation on other Informations at that same time.

December 7, 2021

[18] Ms. Cummings appeared in Provincial Court before Judge Marc Chisholm on December 7, 2021 to deal with five Informations alleging offences contrary to ss. 811, 140(1)(c), 145(3) and 145(2) of the *Criminal Code*. She was represented by counsel. She entered guilty pleas to three breaches of her recognizance of April 25, 2019. The offences were committed on November 6, 2019, November 18, 2019

and December 28, 2019. Judge Chisholm confirmed with Ms. Cummings that her pleas were informed and voluntary. Sentencing was scheduled for March 16, 2022. It was anticipated the remaining charges would be disposed of at that time.

August 11, 2022

[19] On August 11, 2022, Ms. Cummings was scheduled to appear before Judge Brad Sarson in Provincial Court by telephone. The appearance was to have addressed the status of applications Ms. Cummings had brought seeking to: withdraw her guilty pleas; advance a *Charter* argument; consolidate the seven Informations before the Provincial Court and quash all Informations for lack of jurisdiction. Unbeknownst to the judge who set the date, Judge Sarson had vacation scheduled for August 11 and was not presiding on that date.

[20] Judge Sarson's unavailability on August 11 resulted in Ms. Cummings' matter being sent into Judge Alanna Murphy's court. Ms. Cummings did not manage to connect by telephone. After a very brief exchange with Crown counsel, Judge Murphy adjourned the matter for a status report to August 22 when Judge Sarson would be back from vacation.

August 22, 2022

[21] Ms. Cummings was before Judge Sarson on August 22 for a status update on her application to withdraw her December 7, 2021 guilty pleas. Judge Sarson intended to deal with this application before the others Ms. Cummings had filed. She said she was actively trying to find counsel to represent her. October 25, 2022 was set for the hearing of the application. September 27, 2022 was set for a further status report.

September 27, 2022

[22] On September 27, 2022 Ms. Cummings told Judge Sarson that in her opinion he did not have the jurisdiction to hear the application to withdraw her guilty pleas. When asked if she wished to proceed with her application, scheduled for October 25, Ms. Cummings responded that she wanted to proceed with her *certiorari* application in the Nova Scotia Supreme Court. She said the Supreme Court would "have a look at the issue of jurisdictional error preceding the wrongful entry of the guilty pleas".

[23] Judge Sarson pressed Ms. Cummings to answer his question about whether she was going ahead with the application to withdraw. Her response remained the same: the judicial review application she was making would take the matter out of Judge Sarson's hands. She cited *R. v. Batchelor*[4] from the Supreme Court of Canada which she said deprived the Provincial Court of jurisdiction over her until the *certiorari* application has been decided.

[24] Judge Sarson adjourned Ms. Cummings' plea withdrawal application to October 12, 2022 for a status report. He asked her to give some thought in the meantime to whether she intended to proceed. He noted issues Ms. Cummings would need to address if she decided to advance the application. Ms. Cummings responded by stating that once filed, her judicial review application would deprive Judge Sarson of the jurisdiction to hear the matter.

Further Appearances - October 12, 2022 to May 26, 2023

[25] There were ongoing appearances in Provincial Court for Ms. Cummings beyond the dates she targeted in her Notice of Judicial Review. In appearances before Judge Sarson on the matter of her guilty pleas, Ms. Cummings continued to insist he had no jurisdiction over them or her.

[26] At the status hearing before Judge Sarson on October 12, 2022 Ms. Cummings advised that her judicial review application had been filed and was scheduled for October 26. Ms. Cummings insisted the Provincial Court had lost jurisdiction over both her and the offences. Judge Sarson had not seen Ms. Cummings' Notice of Judicial Review. He adjourned her plea withdrawal application to October 21 for a status report so he could track it down.

[27] On October 21, Judge Sarson cancelled the scheduled hearing date of October 25 as it was immediately before Ms. Cummings' judicial review in the Nova Scotia Supreme Court on October 26. A new date was set—March 3, 2023.

[28] On November 24, 2022, Ms. Cummings advised Judge Sarson her application for judicial review had been summarily dismissed. She indicated she had filed an appeal. Judge Sarson confirmed the March 3, 2023 date for the application to withdraw the December 7, 2021 guilty pleas. He scheduled a status date of January 6, 2023 to address whether Ms. Cummings was waiving solicitor-client privilege in relation to communications with the lawyer who represented her

[4] [1978] 2 S.C.R. 988.

when the guilty pleas were entered. Ms. Cummings continued to emphasize that she was before the court "under protest".

[29] On January 6, 2023 Judge Sarson noted that Ms. Cummings had not given any indication she was prepared to sign a solicitor-client waiver. He scheduled February 6, 2023 for a hearing on the issue of implied waiver. On February 6, Ms. Cummings signed a limited waiver. The judge confirmed the March 3 date for hearing Ms. Cummings' application to withdraw her guilty pleas.

[30] In the meantime, Ms. Cummings made a motion in the Nova Scotia Supreme Court to re-open the hearing of the judicial review which had been dismissed by Justice Norton. The motion was heard and dismissed on February 21, 2023 by Justice Mona Lynch. That decision has not been appealed.

[31] On March 3, 2023 Ms. Cummings was back in Provincial Court before Judge Sarson. He sought to ascertain if Ms. Cummings was proceeding with her plea withdrawal application. She ultimately responded with: "I am proceeding with the appeal in the Nova Scotia Court of Appeal with respect to jurisdiction as I've outlined in all the preceding materials". She repeated this position several times and gave no indication she was preparing her withdrawal application.

[32] Judge Sarson concluded there was no alternative but to dismiss Ms. Cummings' application to withdraw her guilty pleas. He did so and set a sentencing date of May 26, 2023 for the three offences. Ms. Cummings was sentenced on that date.

The Notice of Judicial Review—the *Criminal Code* and the *Civil Procedure Rules*

[33] Ms. Cummings' Notice of Judicial Review indicates it was brought pursuant to Part XXVI of the *Criminal Code* and *Civil Procedure Rule* 64. *CPR* 64 permits applications for prerogative writs (*Rule* 64.01(2)), including for *mandamus*, *certiorari* and prohibition. *CPR* 64.03(3) provides that certain provisions of *CPR* 7 are applicable to such applications, including *CPR* 7.05. *Rules* 64.03(2) and 7.05 both indicate the time requirements for filing a notice.

[34] *Rule* 64.03(2) requires that a notice must be filed "no more than twenty-five days after the day of the decision under review…" *Rule* 7.05 specifically states that the notice is to be filed "before the earlier of the following (a) twenty-five days

after the day the decision is communicated to the person; (b) six months after the day the decision is made".

[35] Justice Norton referenced *CPR* 7.05 as the basis for his dismissal of Ms. Cummings' Notice.

What Ms. Cummings is Seeking on Appeal

[36] Ms. Cummings' Notice of Appeal contains the following request for relief:

> **Order requested**
>
> The Appellant says that the judgment appealed from should be reversed and set aside, and a declaration made that the Nova Scotia Provincial Court has lost jurisdiction over the Appellant and matters concerning the Appellant; and that, wherein due process had been denied in the Nova Scotia Supreme Court, on an interim motion to be filed prior to the Motion for Date and Directions, pursuant to Rule 82.22(3), the Respondents be properly put to the mandatory onus of producing the lower court record for the purpose of Judicial Review in the Nova Scotia Supreme Court or in this Honourable Court.

[37] At every court level—Provincial Court, Supreme Court, and Court of Appeal—Ms. Cummings has insisted the Provincial Court has no jurisdiction over her or the criminal charges.

Analysis - Appeal

[38] Justice Norton's determination that Ms. Cummings had filed her Notice out of time involved interpreting the *Civil Procedure Rules*, notably *Rule* 7.05. The standard of review therefore is one of correctness.[5] He identified and applied the *Rule* correctly. Ms. Cummings had to comply with the *Rules* and failed to do so. While the *Rules* allow for the exercise of inherent jurisdiction to excuse compliance[6], there was no basis for Justice Norton to have done so. It was a simple matter. Ms. Cummings was out of time for filing the Notice in relation to: April 25, 2019; November 12, 2019; December 28, 2019; December 30, 2019; December 7, 2021; August 11, 2022; and August 22, 2022. Deference is to be afforded to Justice Norton not excusing Ms. Cummings' non-compliance.

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[5] *Housen v. Nikolaisen*, 2002 SCC 33.

[6] *Civil Procedure Rule* 2.03(1)(c): "A judge has the discretion…to…excuse compliance with a *Rule*, including to shorten or lengthen a period provided in a *Rule*…".

[39] As Ms. Cummings' Notice of Judicial Review was filed on October 5, 2022, her September 27, 2022 appearance in Provincial Court occurred within the 25 days allowed for filing. However, as I have noted, the appearance merely involved a status update and a further adjournment, for status, to October 12, 2022. There was nothing which could give rise to a prerogative writ. Indeed, this was true for all the dates Ms. Cummings included in her Notice.

[40] If Ms. Cummings was dissatisfied with decisions made in the Provincial Court she had the option to pursue remedies under the *Criminal Code*, such as provided by bail review and appeal.

[41] Ms. Cummings targeted the enumerated proceedings in the Provincial Court as they represented an ongoing provocation: the court's continued exercise of jurisdiction over her and the charges.[7]

[42] The *Criminal Code* establishes the jurisdiction of the Provincial Court over Ms. Cummings and the criminal charges against her.[8] Claiming a loss of jurisdiction as Ms. Cummings has done cannot conjure into existence a jurisdictional error. The judges of the Provincial Court have the jurisdiction to address bail (s. 515), remand accused persons into custody (s. 516), accept guilty pleas (s. 606(1.1)), and impose sentence (s. 720). Indeed, as I mentioned earlier, the Crown proceeded summarily which gave the Provincial Court exclusive jurisdiction over Ms. Cummings and the charges.

[43] I do not intend to address Ms. Cummings other grounds of appeal. They are not proper grounds of appeal and I consider them wholly without merit.

[44] I would dismiss the appeal.

Crown Motion to Have Ms. Cummings Declared a Vexatious Litigant

[45] The Crown's motion to have Ms. Cummings declared a vexatious litigant in this Court has a context. She has been before this Court previously, making identical, fruitless arguments about loss of jurisdiction in the Provincial Court. Although what Ms. Cummings did in the past—wasting the Court's time and resources—does not save the Crown's application, there is value in identifying a

[7] Justices of the Peace have jurisdiction to address bail (s. 503) and accept the swearing of an Information (s. 504).
[8] ss. 485, 553.

pattern. However that history, even combined with Ms. Cummings' latest ploys, does not empower this Court to make the declaration being sought. It is the criminal law underpinnings of her Notice and the entitlement to appeal afforded her by the *Criminal Code* that are ultimately fatal to the Crown's motion.

[46] A significant obstacle to declaring Ms. Cummings a vexatious litigant in this Court is a constitutional one. As I will explain, I have concluded it is not possible to use provincial legislation as a springboard for a vexatious litigant declaration where the litigant is relying on the authority of the *Criminal Code* to advance an application for prerogative relief.

[47] Another obstacle is erected by the statutory right of appeal afforded Ms. Cummings by s. 784 of the *Criminal Code*. The section provides for an appeal to the Court of Appeal "from a decision granting or refusing the relief sought in proceedings by way of *mandamus*, *certiorari* or prohibition".

[48] Ms. Cummings' Notice of Appeal pleads s. 784 of the *Criminal Code*.

Not Ms. Cummings' First Protracted Attempt to Avoid Facing the Music in Provincial Court

[49] Ms. Cummings previously employed very similar strategies to those utilized by her in this case, endeavouring, unsuccessfully, to bring a halt to criminal charges proceeding in the Provincial Court. She made repeated claims the Provincial Court had lost jurisdiction over her and the charges. As she did in 2022 before Judge Sarson, Ms. Cummings relied on *R. v. Batchelor* for the proposition that the Provincial Court's jurisdiction was suspended while her *certiorari* application was before the Supreme Court.

[50] I will briefly describe this past history.

[51] In 2011 Ms. Cummings applied for judicial review in the Nova Scotia Supreme Court, her plea for relief including:

> An order quashing all informations, warrants, undertakings, and recognizances which are null and void; dismissal of all charges; and a declaration that jurisdiction had been lost by the Provincial Court over the charges laid against the Applicant; and that all arrests and warrants were null and void and of no force and effect.[9]

[9] *R. v. Cummings*, 2011 NSSC 324, at para. 1.

[52] Her application was heard and dismissed on June 29, 2011. Her appeal of the decision was dismissed for failure to perfect.[10] She sought leave to the Supreme Court of Canada which was refused.[11]

[53] Ms. Cummings' failed *certiorari* application in 2011 is referenced in *R. v. Cummings*, 2013 NSCA 112, a detailed summary of her efforts in this Court and the Nova Scotia Supreme Court to neutralize Provincial Court proceedings against her. Justice Fichaud, in a written decision on motions in Chambers by Ms. Cummings, noted that in June 2013 Ms. Cummings had attempted to file what she purported was a new Notice of Judicial Review in the Nova Scotia Supreme Court. It repeated the same claim for relief that had been rejected on June 29, 2011. At the direction of Justice Heather Robertson of the Nova Scotia Supreme Court, it was not accepted for filing.

[54] Ms. Cummings appealed the refusal to accept her "new" Notice of Judicial Review for filing to this Court. In her Notice of Appeal she sought orders for:

> …a declaration that the Provincial Court lost jurisdiction over all charges and that all arrests and warrants since 2008 were null and void; an order quashing all informations, undertakings and recognizances; an order directing all persons to cease taking any further action against her in Provincial Court; an order staying a conviction [that had already been entered against her in Provincial Court].[12]

[55] Justice Duncan Beveridge sitting in Chambers dealt with Ms. Cummings' motion seeking the stays. He noted the record before him indicated proceedings involving Ms. Cummings had been ongoing in Provincial Court since 2007. He referred to her failed attempt in 2011 to have all the Provincial Court proceedings stayed by way of judicial review. Justice Beveridge noted the proceedings included an application Ms. Cummings had scheduled in Provincial Court for the withdrawal of guilty pleas "she had entered some years ago to various charges".[13]

[56] Justice Beveridge denied Ms. Cummings a stay of proceedings. Applying the well-established *Purdy*[14] test, he found no evidence she would experience irreparable harm nor had she shown exceptional circumstances.

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[10] *R. v. Cummings*, 2012 NSCA 52.
[11] *R. v. Cummings*, [2012] S.C.C.A. No. 366.
[12] *Cummings v. Nova Scotia*, 2013 NSCA 96 at para. 12 (per Beveridge, J.A. in Chambers).
[13] *Ibid* at para. 27.
[14] *Purdy v. Fulton Insurance Agencies Ltd*., 1990 NSCA 23.

[57] On June 10, 2014, the Registrar's motion seeking dismissal of Ms. Cummings' appeal (of the Justice Robertson "decision") for failure to perfect was granted. Justice Scanlan in Chambers, did not mince words when describing the protracted proceedings Ms. Cummings had been initiating:

> [4] The laws and Rules of Court intend to provide a forum for aggrieved parties to have valid disputes litigated in a responsible and efficient manner, In criminal proceedings the *Criminal Code*, rules of evidence and *Civil Procedure Rules* are intended to offer an accused full opportunity of defence so as to allow for a fair trial on the merits.
>
> [5] The processes in place are not intended to provide a forum for justice participants to embark upon a mind-numbing series of applications and appeals without regard to the merits or costs.
>
> …
>
> [8] Ms. Cummings appeared on June 5, 2014, to resist the Registrar's motion for dismissal. She suggests that she should be permitted to proceed with her appeal. The documents Ms. Cummings filed in preparation for this contested motion suggest to me that she will not follow any court direction in any event, even if this appeal were to proceed. The materials she has filed suggest to me that she is insisting on arguing every case in every court she has encountered.[15]

[58] Justice Scanlan noted that Ms. Cummings was continuing to advance issues before the courts that were moot,

> [12] …because the proceedings in Provincial Court have caught up and passed her. The trial has been completed, she has been sentenced and the appeal period long since expired.

[59] Ms. Cummings' litigation in 2011-2014, aimed at the Provincial Court proceedings in which she was ensnared, consumed valuable court time and resources without achieving a shred of success. This strategy is on repeat in this case with mootness in play as well. Notwithstanding Ms. Cummings' assertions that Judge Sarson had no jurisdiction over her or the charges, her guilty pleas concluded in the imposition of a sentence from which no appeal has been taken.

Proceedings before the Nova Scotia Court of Appeal in 2022-2023

[60] Ms. Cummings filed her Notice of Appeal from Justice Norton's decision on November 22, 2022. She was required to file her Motion for Date and Directions

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[15] *R. v. Cummings*, 2014 NSCA 61.

and a Certificate of Readiness no later than March 21, 2023. She did not do so. On March 30, 2023, the Registrar made a motion to dismiss the appeal. In response, Ms. Cummings filed the Motion and Certificate. The *Civil Procedure Rules* do not empower the Registrar to accept a late filing, requiring the matter to be dealt with by a judge in Chambers.

[61] Ms. Cummings appeared in Appeal Court Chambers before Justice Peter Bryson on April 20, 2023. She brought several motions, including a motion to amend her Notice of Appeal and a motion for *mandamus* and prohibition. She was seeking to include in her appeal Justice Lynch's refusal to reopen the judicial review Justice Norton had dismissed. And she explained to Justice Bryson why she was seeking an order for prohibition against the Provincial Court:

> …And you know, I had to go through an inordinate number of hearings, and I rightly—I believe rightly—this is squarely a jurisdictional issue. And it's a lot to ask me to repeatedly show up in court for things that the court doesn't have, I submit, jurisdiction over me or the offences.

[62] Justice Bryson dismissed Ms. Cummings' proposed amendment. He also dismissed her motion for *mandamus* and prohibition. He allowed the late filing of Ms. Cummings' Motion for Date and Directions.

[63] At the April 20 Chambers hearing, the Crown indicated it was seeking to have the Court declare Ms. Cummings a vexatious litigant in relation to proceedings in the Court of Appeal alone. Crown counsel acknowledged that lower courts would have to exercise their own inherent jurisdiction to make such a declaration for the purpose of controlling their processes.

The Basis for the Notice of Judicial Review

[64] As I noted, Ms. Cummings' Notice of Judicial Review states it was brought pursuant to Part XXVI of the *Criminal Code* and *Civil Procedure Rule* 64. Part XXVI applies to proceedings in criminal matters by way of *certiorari*, *mandamus* and prohibition. Ms. Cummings sought *certiorari* for what she alleged was Judge Sarson's error in proceeding with her plea withdrawal application despite having lost jurisdiction. Irrespective of her meritless claims, Ms. Cummings' application for judicial review was not a civil matter. It relied on the prerogative writ provisions of the *Civil Procedure Rules* and the *Criminal Code*.

The Crown's Application for a Vexatious Litigant Declaration

[65] The Crown asks to have Ms. Cummings declared a vexatious litigant in this Court and for an Order that prevents further litigation by her or on her behalf without the prior approval of a judge of this Court.

[66] The Crown correctly acknowledges that the authority to declare Ms. Cummings a vexatious litigant cannot be found in section 45B of the *Judicature Act*[16] which is inapplicable to criminal proceedings, including judicial review arising from criminal proceedings. The reasoning of the British Columbia Court of Appeal in *Holland (Re)*[17] is persuasive on this point. The Court held:

> [5] …vexatious litigant orders pronounced under the authority of provincial statutes do not apply to criminal matters proceeding properly as applications for certiorari under the *Criminal Rules*.

[67] The constitutional problem is one of separation of powers. As stated in *Holland*:

> [18] …I do not think that provincial legislation intended to regulate criminal procedure would be constitutionally valid. Parliament has exclusive jurisdiction over criminal law and criminal procedure by virtue of s. 91(27) of the *Constitution Act*, 1867. I think it clear that this is a criminal matter, regulated as a matter of procedure by the *Code* and the *Criminal Rules*. As a matter of criminal procedure, the regulation of such applications falls within the exclusive jurisdiction of Parliament.
>
> [19] In my view, the straightforward answer is that the Legislature, in passing vexatious litigant legislation, did not intend to regulate criminal procedure…

[68] As with our *Civil Procedure Rule* 64, the British Columbia *Criminal Rules* were enacted pursuant to the rule-making authority found in s. 482 of the *Criminal Code*. Our Rule 64.01(1) states: "This Rule is made under subsections 482(1) and (3) of the *Criminal Code*".[18] Those provisions of the *Code* permit courts of appeal to make rules of court "not inconsistent with this or any other *Act* of

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[16] R.S., c. 240, s. 45B(1) Where a court is satisfied that a person has habitually, persistently and without reasonable grounds, started a vexatious proceeding or conducted a proceeding in a vexatious manner in the court, the court may make an order restraining the person from (a) Starting a further proceeding on the person's own behalf or on behalf of another person; (b) Continuing to conduct a proceeding without leave of the court.
[17] 2020 BCCA 304.
[18] *CPR* 64.01(1).

Parliament…"[19] *CPR* 64.01(2) provides that "A person may apply for a prerogative writ in relation to a criminal proceeding…in accordance with this *Rule*".

[69] The Crown proposes we should find our authority to declare Ms. Cummings a vexatious litigant in *Civil Procedure Rules* 90 and 91. *Rule* 91 governs criminal appeals and is made under subsections 482(1) and (3) of the *Criminal Code*. *Rule* 91.02(2) states that the *CPR*s as a whole and in particular *Rule* 90, governing civil appeals, apply to criminal appeals "with any necessary modifications and when not inconsistent" with *Rule* 91. There is however no authority in the *Civil Procedure Rules* that would allow for the circumvention of the doctrine of separation of powers. In accordance with s. 91(27) of the *Constitution Act*, 1867, Parliament exercises exclusive jurisdiction over criminal law and procedure.

[70] Ms. Cummings' appeal is a criminal matter, regulated as a matter of procedure by the *Criminal Code* and the *Civil Procedure Rules*. I find that *Rules* 90 and 91 cannot ground a vexatious litigant order in relation to Ms. Cummings any more than s.45B of the *Judicature Act* can. The same separation of powers and statutory right of appeal obstacles are present. A vexatious litigant order in this context would be constitutionally invalid.

[71] While I am satisfied this Court has the inherent jurisdiction to control its own processes,[20] we are otherwise a statutory court. We must exercise control over proceedings before us in accordance with the law. In my opinion, there is limited scope for invoking the common law doctrine of abuse of process by way of an order restraining a vexatious litigant. The restraints we can cast over litigants who abuse our processes is limited to civil litigants. It is only in the context of civil litigation that this Court has declared a litigant vexatious and prohibited him from commencing appeals without leave of the Court of a judge thereof.[21]

[72] We have not been made aware of any appellate decision in Canada in which a litigant comparable to Ms. Cummings, that is, a litigant appealing pursuant to s. 784 of the *Criminal Code* from the dismissal of an application for Part XXVI prerogative relief, has been made the subject of a vexatious litigant order.

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[19] s. 482(1), *Criminal Code*.
[20] *United States of America v. Shulman*, 2001 SCC 21 at para. 33.
[21] *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92.

[73] The Crown has relied on *R. v. Grabowski*[22] which involved the filing of multiple prerogative writ applications and the exploitation of the *Batchelor* principle to dodge trial on three traffic tickets. When Mr. Grabowski served the Provincial Court and the Crown with his third Notice of Motion he left the courtroom. The court proceeded to hold the trial in his absence. Convictions were entered and fines imposed. Mr. Grabowski's fourth application for prerogative relief sought to have his convictions stayed.

[74] The Alberta Court of Queen's Bench dismissed the application finding that Mr. Grabowski was "intentionally delaying the prosecutions".[23] The court found Mr. Grabowski had employed *Batchelor* to avoid trial on three earlier occasions. This time, "In the face of the fourth motion for prerogative relief, and having absented himself from the proceedings, the court…was entitled to proceed on evidence to convict and to sentence Mr. Grabowski".[24]

[75] In my view, the *Grabowski* case does not assist the Crown. It is not an authority for declaring Ms. Cummings a vexatious litigant. No application was made to have Mr. Grabowski declared a vexatious litigant. The Alberta Court of Queen's Bench endorsed the Provincial Court's entitlement to proceed to adjudicate his charges notwithstanding *Batchelor* and the third application for prerogative relief. Similarly, Judge Sarson proceeded to deal with Ms. Cummings' charges notwithstanding her pending appeal in this Court from the dismissal of her Notice of Judicial Review. I am satisfied he had the jurisdiction to do so and was not required to delay the Provincial Court proceedings.

Conclusion

[76] Were Ms. Cummings before this Court having brought the plethora of judicial review and other applications arising from civil not criminal proceedings, in my opinion we would have the authority to declare her a "vexatious litigant" on the basis of her having "habitually, persistently and without reasonable grounds, started a vexatious proceeding".[25] I do not see a basis to do so here that could be compatible with Parliament's exclusive jurisdiction over criminal law and Ms. Cummings' statutory right of appeal under the *Criminal Code*. Ms. Cummings should not expect, however, that the Crown's failed motion is a license for her to

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[22] 2011 ABQB 510.
[23] *Ibid* at para. 24.
[24] *Ibid*.
[25] 45B of the *Judicature Act*.

burden this Court with meritless motions and appeals. At the very least, her predilections are known and she will be held in future, on a consistent basis, to strict compliance with the *Rules*.

Disposition

[77] I would dismiss the appeal and the Crown's motion in this case to have Ms. Cummings declared a vexatious litigant in this Court.

Derrick, J.A.

Concurred in:

Bourgeois, J.A.

Beaton, J.A.

Appendix "A"

Form 7.05

Hfx No. 5 1 8 1 9 5

2022

IN THE SUPREME COURT OF NOVA SCOTIA

Between:

WANDA CUMMINGS — APPLICANT / DEFENDANT

- and -

HER MAJESTY THE QUEEN — RESPONDENT

Notice for Judicial Review

Request for judicial review

Pursuant to Part XXVI of the *Criminal Code* and *Civil Procedure Rule* 64, the Applicant, Wanda Cummings, an unrepresented defendant in this matter, requests judicial review of decisions made, and of the failure or refusal to make, by the Nova Scotia Provincial Court ("NSPC").

The Applicant also requests judicial review of the NSPC's and the Nova Scotia Department of Justice's ("DOJ") failure or refusal to provide audio recordings and documents related to the Applicant's proceedings, as have been requested by her since January 2020 to present date.

Decisions to be reviewed[1]

1. The decision is dated 25 April 2019, whereupon the Honourable Judge Frank P. Hoskins (as he then was) imposed an interim release condition upon the Applicant under s. 515 of the *Canada Criminal Code*, 1985, c. 46, (the "*Code*"), which was identical in pith and substance to s. 12 of the Provincial *Emergency 911 Act*, SNS 1992, c. 4 (the "*EMG Act*"). On that same date, His Honour imposed both weapons and abstinence conditions on the Applicant. The decision does not disclose His Honour's oral or written reasons for imposing the release conditions, nor does it disclose that any consideration was given to the same. (***A copy of the decision is attached to this Notice in Tab 1: 2019-04-25 transcript, and recognizance of the same date.***)

   The decision to impose these conditions was communicated to the Applicant by duty counsel whilst she was still in holding cells at the Dartmouth Provincial Court, prior to her appearing before His Honour on 25 April 2019, and for which the Applicant had protested on that day and since.

   Copies of court audio and/or documentation related to Judge Hoskins' discussion with counsel or justification for the imposition of the release conditions under s. 515 for 25 April 2019 have never been provided to the Applicant.

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1 Due to the extraordinary length of time involved in this case, the number of cumulative jurisdictional errors and breaches of natural justice, and the need to describe the nature of audio and documents sought, this Notice is necessarily lengthy, and filed within the applicable deadlines.

2. The decision is dated 12 November 2019, whereupon Justice of the Peace Elizabeth James received, took evidence, and endorsed a two-count information against the Applicant under s. 508 of the *Code*, which was sworn by a civilian. The 6 November 2019 information alleged two breaches of conditions which were imposed on the Applicant within the criminal process on 25 April 2019. The Applicant was informed on 20 June 2022 that the informant, Margaret ("Peggy") Carroll, was not a peace or public officer, and not a "Member of the Halifax Regional Police" as stated on the information. The Applicant learned of this non-comformance with the *Code* in June 2022 when compiling the materials for her *Charter* application.

   Court services have failed, to present date, to provide information with respect to the laying and swearing of all of the informations against the Applicant dating back to April 2019, all of which she has challenged as being invalid. (***A copy of the decision is attached to this Notice in Tab 2: 2022-09-05 Informant documentation request and informations.***)

3. The decision is dated Saturday, 28 December 2019, whereupon Justice of the Peace Bruce McLaughlin remanded the Applicant to the Central Nova Scotia Correctional Facility ("CNSCF") under s. 503 of the *Code*, subsequent to an arrest without warrant, on allegations of a s. 145(5) breach of the "911 condition" and an abstinence condition as imposed on 25 April 2019. No Crown prosecutor was present for the "judicial interim release" hearing which was held pursuant to s. 515 of the *Code*, at which time the Applicant was arraigned.[2] JP McLaughlin may or may not have also ordered a psychiatric assessment under s. 672.12 of the *Code*.

   The matter was scheduled to be brought back to the NSPC for a show cause hearing on 30 December 2019. The remand warrant, Order #2241394 erroneously states sthat the Applicant was charged with two failures to appear on 28 December 2019, a Saturday. The decision was communicated to the Applicant at the time of the hearing. (***A copy of the decision is attached to this Notice in Tab 3: 2019-12-28 Judicial Interim Release Hearing and Warrant.***)

   No copy of any assessment order, nor audio for a hearing regarding justification for any such assessment order or detention, nor any copy of an assessment, has ever been provided to the Applicant through Court Services or DOJ to present day.

4. The decision is dated 30 December 2019, whereupon the Honourable Judge Theodore K. Tax, pursuant to ss. 515(6) and 524 of the *Code*, remanded the Applicant to CNSCF for 11 more days, to 10 January 2020, on the basis that she did not have a residential surety in place for release. (***A copy of the decision is attached to this Notice in Tab 4: 2019-12-30 and 2019-01-10 Hearings, Internal Court files, at Tab 4A***)

   The remand warrant, Order #22442162, erroneously states that the Applicant was charged with two failures to appear (***see Tab 4C***). Endorsements (***see Tab 2, endorsements on each***

2 The "judicial interim release" hearing was impermissibly conducted by a police officer. *Hearing Office Bail Hearings (Re)*, 2017 ABQB 74.

information) show that a s. 524 bail revocation application was made by the Crown for the preceding four summary informations (dated 25 April 2019, 18 June 2019, 6 November 2019, 18 November 2019). A show cause was scheduled at 9:30 a.m. on the 28 December 2019 information, and the bail revocation application for 11:00 a.m. for the four preceding informations. This is also made clear on the "Hearing Schedule List" of internal court documents (***see Tab 4B***). VoxLog and LogNotes between 11:00 a.m. and 11:26 a.m. have never, at any time, been provided.

On 30 December 2019, the Applicant did not appear before Judge Tax until approximately 3:30 p.m. A judge may or may not have also ordered continued detention for the purpose of a psychiatric assessment under s. 672.12 of the *Code* at an 11:00 a.m. hearing.

The matter was scheduled to be brought back again to the NSPC for a bail revocation and show cause hearing on 10 January 2020 before the Honourable Judge Alanna Murphy, (***see Tab 4D***) whereupon the Applicant was released with a non-residential surety in place. The release was ordered on one recognizance attaching to all five informations on a "revocation with consent" under s. 524 of the *Code*. These decisions were communicated to the Applicant at the time of the hearings.

Despite repeated requests, no audio or documentation for the bail revocation application or hearing for which the Applicant was absent, nor for justification of the continued detention in the circumstances of the Applicant, have ever been provided to present day.

5. The decision is dated 7 December 2021, wherein the Honourable Marc C. Chisholm heard and adjudicated on a plea negotiation between the Applicant's then defense counsel and the Crown, and accepted guilty pleas on three counts with respect to the 6 November 2019, 18 November 2019, and 28 December 2019 informations, pursuant to ss. 669.2(2) and 804 of the *Code*. The decision was communicated to the Applicant on 7 December 2021. (***A copy of the decision is attached to this Notice in Tab 5: 2021-12-07 Hearing, Chisholm.***)

6. The decision is dated 11 August 2022, wherein an unknown judge conducted a hearing with the Crown present with respect to the Applicant's matters. The Applicant was excluded from the courtroom. This decision was communicated to the Applicant on 23 August 2022.

   Despite repeated requests, no audio for any of the hearings which were conducted in the Applicant's absence, as well as relevant documents she sought related to her matters, have been provided to her to present day. (***A copy of documents related to the decision is attached to this Notice in Tab 6: Documentation requests regarding Applicant's exclusion from hearings.***)

7. The decisions are dated 24 May through to 27 September 2022. Two new informations had been endorsed by justices of the peace and jurisdiction seized under allegations of breaches of the "911 condition". Arraignments and hearings with respect to those, as well as the original five informations, were held. The Applicant continued to challenge jurisdiction throughout this time, citing the issues above.

Chief Judge Pamela Williams arraigned the Applicant with respect to the 14 March 2022 information on 27 June 2022, and the Crown elected to proceed summarily. The Honourable Judge Alanna Murphy arraigned the Applicant with respect to the 29 May 2022 information on 5 July 2022, and the Crown elected to proceed summarily. With respect to the original five informations, the Honourable Judge Brad Sarson held hearings and adjudicated on several substantive matters, the latest of which was the Applicant's application to withdraw the guilty pleas of 7 December 2021. The Applicant notified the Court throughout September 2022 of her intent to file a *certiorari* application with this Honourable Court, citing that jurisdiction was suspended until a determination was made on that application by this Honourable Court, as per *Batchelor v. R.*, [1978] 2 SCR 988. (***A copy of the indices of the continued matters is attached to this Notice in Tab 7: Reference Sheets and Indices of Hearings.***) The audio for 27 September 2022 has not yet been provided by court services.

Grounds for review

1. On 25 April 2019, the Honourable Judge Frank P. Hoskins exceeded jurisdiction and denied natural justice by elevating a provincial offence under the *EMG Act* to a hybrid/indictable offence under the *Code* by "converting" it into a release condition, thereby impermissibly exceeding the legislative limitations of the *EMG Act*, which was a contravention of that Act, the *Summary Proceedings Act*, RSNS 1989, c. 450 (the "*SPA*"), as well as the authorised conditions under s. 515(4) of the *Code*.[3] (***See Tab 1, 2019-04-25 transcript, and recognizance of the same date.***)

   Jurisdiction under the provincial *EMG Act* could not be "transferred" or conferred to the NSPC pursuant to s. 470(b)(ii), or make it a "court of competent jurisdiction" as defined in s. 2 of the *Code* for the purposes of an indictable offence.

   Judge Hoskins' decision not only contravened the *SPA* in general, but granted the police arrest powers that they rightly did not have under the *EMG Act*. The decision led to a further arrests and abuses of process, and police misconduct. Judge Hoskins' decision was *ultra vires* the *EMG Act*, the *SPA*, and the *Code*, and amounted to a breach of natural justice, resulting in loss of jurisdiction over the Applicant.

   Further, any subsequent proceeding with respect to the impermissible "911 condition" was conducted without jurisdiction, as the Court had no jurisdiction over an offence which alleged

3 *R. v. Zora*, 2020 SCC 14: "**Conditions cannot be imposed for gratuitous or punitive purposes** and should not be behaviourally-based. **They must be sufficiently linked to the defined statutory risks, as narrowly defined as possible to meet their objective, and reasonable**. They will only be reasonable if they realistically can and will be met by the accused. **They cannot contravene federal or provincial legislation or the *Charter***, and must be clear, minimally intrusive, and proportionate to any specific risk posed by the accused. … All persons involved in the bail system are required to act with restraint and to carefully review bail conditions they propose or impose. The Crown, defence, and the court all have obligations to respect the principles of restraint and review. **Ultimately, the obligation to ensure appropriate bail orders lies with the judicial official. These obligations carry over to consent releases. Judicial officials should not routinely second-guess joint proposals by counsel, however, they have the discretion to reject overbroad proposals and must act with caution when reviewing and approving consent release orders.**"

a failure to comply with an impermissible condition in contravention of other legislation, and for the Court's failure to comply with mandatory provisions of the *Code*.

Judge Hoskins also exceeded jurisdiction by imposing weapons conditions, which were not permissible under s. 515(4.1) with regard to both the circumstances and the subject matter on 25 April 2019. Neither were the "keep the peace and be of good behaviour" and abstinence conditions appropriate in the circumstances.[4] No inquiry of any kind was made with respect to the conditions.

While the Crown's decision to join a s. 811 charge on the same information as the s. 140(1)(c) allegation—which served wrongly and prejudicially to infer a predisposition toward violence on the part of the Applicant—an inquiry by His Honour was nonetheless mandatory under the *Code* with respect to the particular circumstances before making a decision to impose any conditions at all.

Due to Judge Hoskins' failure to make a mandatory inquiry into the validity of the proposed conditions, the Applicant was denied any opportunity to show cause for release without the conditions. She had protested at length with duty counsel that the conditions were inappropriate and would be abused by the police. The Applicant's counsel attempted to pressure her into pleading guilty and go to wellness court during the morning of 25 April 2019, which she rightly and flatly refused, as she knew herself to be innocent and, further, not mentally ill. Her delayed appearance before Judge Hoskins, which occurred just before noon on that day, after having been in cells all morning, should also have been an indication to His Honour of her protest regarding the conditions. It was not a "consent release". No audio with respect to a "cell update", discussion about the Applicant's late appearance, or appropriateness of the conditions has ever been provided to her.

The 911 interim release conditions were indeed abused by the police and led to further unlawful charges and/or arrests and detentions of the Applicant on 18 June 2019, 6 November 2019, 18 November 2019, 28 December 2019, and, after having filed her *Charter* application on 17 February 2022, further charges were laid again on 14 March 2022 and 29 May 2022, when she was again in dire need of emergency medical assistance. In the 29 May 2022 incident, the police deliberately sabotaged the Applicant's cell phone, resulting in destruction of evidence which was required at that same time for the purpose of her applications being filed before the NSPC. (See Tab C, *Informations and Endorsements*)

In addition to being charged with the above alleged breaches of the impermissible "911 condition" under the *Code*, the Applicant was concurrently charged on 6 and 18 November 2019 with SOTs under s. 12 of the *EMG Act*, for which she appeared to defend, and the matters were withdrawn. The Applicant had not called 911 in either of those circumstances, but was charged, and, in the case of 18 November 2019, arrested and detained by police.

2. The 6 November 2019 information, endorsed by JP Elizabeth James and sworn against the Applicant by Margaret "Peggy" Carroll, a police and fire dispatcher, is *de facto* null and void,

4 *R. v. Zora*, 2020 SCC 14, at para. 94.

a "false information".[5] Ms. Carroll is neither a peace officer, nor a public officer, but a civilian without any authority in this set of circumstances to swear an information. She did not legally or otherwise have the means to form the basis of reasonable and probable grounds for the purpose of swearing the information on breach of condition allegations under the *Code*.

The Applicant made an application to the NSPC to examine all six informants on the seven informations, as she had been told personally by members of both HRPD (other than those who had charged her) and the RCMP that they did not agree with the laying of the charges. In addition, evidence filed by the Applicant with the NSPC shows that she was arrested repeatedly without any reasonable or probable grounds, and where the police themselves had full knowledge that she wasn't breaching the "911 condition" at the time of the arrests or charges being laid.

3. On 28 December 2019, Justice of the Peace McLaughlin exceeded jurisdiction, denied natural justice, and failed to act with impartiality by remanding the Applicant without any pretense of due process, and without the Crown being present. He wrongly classified the hearing as a "judicial interim release" under s. 515, but the Applicant was given no due process with respect to s. 515(6) to show cause for release, despite his acknowledgement when stating: "Now, I know you disagree with the charges, but you understand what the charges are."

   In the circumstances, and given the absence of a Crown prosecutor, there was also no authority under s. 503 of the *Code* for JP McLaughlin to remand the Applicant. The *Code* mandates that the Applicant must be taken in person, and that her physical presence is required under s. 502.1 and s. 515(2.2). It is the right of the accused to come, within a 24-hour period, under the protection of the courts and out of the grips of police custody.[6]

   In this instance, again, the Applicant had not called 911, but was forced to call the non-emergency number as she was in dire need of medical assistance. The Applicant would only days later be rushed to Dartmouth General Hospital Emergency from CNSCF for the same medical issue as it had not been addressed in the call of 27 December 2019.

   Despite having full knowledge that she had not called 911 on the evening of 27 December, the police appeared at her home over two hours later, broke down the door, and immediately arrested her. In addition, as the Applicant was unable to speak in the non-emergency call due to her medical state, no identification of her as being the caller could be ascertained by anyone at the time, nor could the location from which the call was made have been known. The location from her phone at the time indicated an address more than a block away.

   The Applicant informed Justice McLaughlin on 28 December 2019 that she had not been afforded an opportunity to call a lawyer. She also protested that she had the proof on her phone that she had not breached the conditions as alleged and that she was "seriously opposed" to being detained on the police officer's request for "remand".

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5 *R. v. Awad*, 2013 NSPC 82, upheld in *R. v. Awad*, 2015 NSCA 10.

6 *R. v. Ansari*, 2008 BCSC 1492.

There are indications that JP McLaughlin may also have ordered a psychiatric assessment of the Applicant under s. 672.12 of the *Code* at the request of the police, which would have been ordered without her consent or knowledge at the time, and unnecessary and impermissible under the law in those circumstances. No presentation of a mental disorder existed with respect to the Applicant at any material time on 28 December 2019, nor before or since.

Notwithstanding the already-lacking jurisdiction since April 2019 on the "911 condition", jurisdiction would have been thereby lost again over the Applicant and the offence due to Justice McLaughlin's denial of natural justice and failure to comply with the statuory provisions of the *Code*.

No assessment order from court staff for 28 December 2019 has ever been provided, but circumstances, nuances, and other records obtained by the Applicant after the fact revealed that she was surreptitiously subjected to an assessment. The Applicant also went through the FOIPOP process with DOJ (as well as court services) several times since release in 2020 to obtain copies of the 28 December remand warrants and any related documentation, only to be told that nothing existed for that date. At the continued insistence of the Applicant, the 28 December 2019 remand warrant, however, was very recently mysteriously "found" on 22 September 2022 and provided. The existence of an assessment order and any related assessment continues to be denied by court services.

4. Again, notwithstanding lack of jurisdiction over the defendant and the offence, the Honourable Judge Theodore Tax exeeded jurisdiction and failed to comply with provisions of the *Code*. The decision to remand the Applicant to CNSCF for 11 more days, to 10 January 2020, was made without the Applicant's consent, and contrary to s. 515(6), without permitting her to show cause, as is mandatory. The order was also made, ostensibly, pursuant to s. 524, and ostensibly because the Applicant did not have a (residential surety) "plan in place".

   The Applicant did have a surety in place, which also should not have been required under the circumstances. The Crown had already elected to proceed summarily. The Applicant's surety was present in court with the proof on her cell phone that she had not dialed 911, had not breached conditions, and could also testify to the fact that the police had kicked down her door two hours after she called a non-emergency number for medical help. Duty counsel was very alive to this fact, as was Crown counsel. The surety, however, was "dismissed" by both duty counsel and the Crown, and under the emphatic protest of the Applicant.

   This was another circumstance where duty counsel very forcefully attempted to coerce the Applicant into pleading guilty and going to wellness court, which she flatly and rightly refused to do, based both on her innocence, and the fact that she was not mentally disordered.

   The Applicant was clear on the record with Judge Tax that the breaches were "alleged" and that she did not agree with the allegations, which Judge Tax acknowledged. He also stated that the Crown would be "making" a revocation application on the return on 10 January 2020. On the face of it, none of this made sense, also as protested by the Applicant. It is pointless to have a show cause and bail revocation on a third appearance after the Applicant had already been twice detained.

Further, as the Crown had already elected to proceed summarily, and there was no "indictable" offence under s. 524 upon which to make the application.[7] All four preceding informations were also summary matters.

It was incumbent upon Judge Tax to proceed to a hearing on 30 December 2019 to allow the Applicant to show cause why she should not be detained, and mandatory under s. 524 for His Honour to do so—despite duty counsel's misstatement to the Court that it was a "consent remand" where clearly it was not.[8] Even if duty counsel had agreed to three days, Judge Tax's decision, of his own volition, to adjourn it for another 11 days, also exceeded the limitations under 516(1).

The 30 December 2019 warrant erroneously enumerates two alleged failures to appear on 28 December 2019 (a Saturday). Judge Tax was aware that no failure to appear was owed to the Applicant, and had read the alleged 911 and abstinence breach allegations to her on the record. No lawful reason for continued detention of the Applicant existed and a denial of natural justice once again occurred. Notwitstanding the already-lacking jurisdiction, the Court would have lost jurisdiction over the Applicant and the offences once again.

Again, an order for psychiatric assessment may or may not have been made at 11:00 a.m. on 30 December 2019 (or at some point on that day; the Applicant was absent and cannot know). No audio or documentation has ever been provided with respect to the actual orders that were filed on that day, whether they be a revocation application or an application for assessment under s. 672.12, but there are strong indicators that this was ordered. This, too, would have been in contravention of the *Code*.

On 10 January 2020, the Applicant appeared before Judge Alanna Murphy for the purpose of a "bail revocation" and "show cause" hearing. The Applicant this time had another surety, (again, who was not required under the circumstances pursuant to the provisions of the *Code*), and who also this time brought the Applicant's cell phone as proof of her innocence. Judge Murphy stated that she did not have a "bail revocation" application before her.

Duty counsel stated, now after the fact, that it was a "revocation by consent", which was not only untrue, but absurd on the face of it. Judge Murphy made no inquiry as to what had transpired and why she had no application in front of her.

Further, duty counsel on this day stated on the record that the new surety was "going to be out of the province" for a period of time and that "the surety would need to be surrendered." Judge Murphy responded to duty counsel that it was a non-residential surety and questioned the need for surrender. It is obvious that the reason for the Applicant's detention on 30 December 2019 was not for failure to provide a "residential surety", as a non-residential surety was before the Court.

The Applicant, the surety, and another person appearing as support for the Applicant on this day heard this exchange. Despite repeated requests, the audio which was provided to the

7 *R. v Webley*, 2015 ONSC 3857.
8 *R. v. Zora*, 2020 SCC 14.

Applicant which contains this exchange between duty counsel and Judge Murphy has not been made available. It is a missing portion.

Despite no bail revocation application having been made on this day with respect to the four preceding informations (at least, in so far as audio has been provided, and as per Judge Murphy on 10 January 2020), the Applicant was released on the same impermissible conditions (with an edit by the Crown with respect to the "911 condition") which attached to all five summary informations, dating back to April 2019.

On 28 September 2020, all five informations were consolidated at the request of the Applicant and with the agreement of the Crown.

5. For the reasons and grounds described above, the Honourable Marc C. Chisholm's decision to accept guilty pleas on 7 December 2021 was done without the jurisdiction to do so. Also, due to the circumstances in which the pleas were entered on the record, the Applicant, on 21 February 2022, filed an application to withdraw the pleas on the grounds that they were made under duress (coerced) and misinformation by counsel, that they did not concur with the facts, that the reasons and consequences were not understood by the Applicant when making the pleas, and that the Applicant had always and continues to deny guilt. On the same day, she filed a *Charter* application, citing violations of sections 7, 9, 10, 11, and 15 of the *Charter*.

   Whilst she was in the process of compiling the materials for the withdrawal of plea and *Charter* applications, the Applicant was charged with the two new informations on 14 March and 29 May 2022. At that same time, the Applicant was also seeking an extension for which to file her withdrawal of plea and *Charter* materials. On 13 June 2022, an extension was granted by Judge Chisholm to 7 July 2022 (ultimately filed on 11 July 2022) and a status date was set down for 11 August 2022 with respect to the Applicant's two applications. The date for the hearing of the withdrawal of pleas application had already been set down on 23 March 2022 by the Honourable Judge Alan Tufts for 6 September 2022.

   The two new charges, however, prompted the Applicant on 11 July 2022 to file, together with her withdrawal of plea and *Charter* applications, an application to vacate the impermissible conditions and consolidate the two 2022 charges with the original five informations, and to stay all matters for abuse of process. The Applicant also filed an application on 25 July 2022 to quash all informations as nullities, for which she had made submissions in her 11 July 2022 materials.

6. The Applicant was excluded from the 11 August 2022 status hearing and possibly a hearing sooner than that in addition. It is unclear to the Applicant who was present at the hearing(s). Excluding the Applicant from her proceedings on 11 August 2022, and possibly sooner as well, going to her procedural and substantive rights, is a denial of natural justice, and is not permissible under the *Code*, with the exception of extraordinary circumstances which did not exist in this case. Whether her exclusion from the courtroom occurred at trial or any status or pre-trial hearing is immaterial. At all material times she was, notwithstanding lack of jurisdiction, "being tried" and had a right to be present for matters that were of "vital interest".

Records indicate that between the 11 July date of filing, and the status hearing of 22 August, Crown counsel had met with a judge "on the record" and received instructions in the Applicant's absence. (***See Tab 6, 5 September 2022 email from the Applicant to Mr. McCracken, #01, second to last page***) One of those instructions was to ascertain whether the Applicant was waiving solicitor-client privilege.

The record indicates that the Crown may also have been instructed to ascertain on the record whether the Applicant was "self-represented," which she was not, the fact of which was well known to the Court and counsel alike since April 2019. The Crown indeed did make an inquiry with respect to that issue later on 22 August 2022 before Judge Sarson.

It also appears from the record that, as of 8 August 2022 (***see Tab 6, hearing***), the NSPC had already decided that the Applicant's withdrawal of plea and *Charter* applications would not be heard on the scheduled 6 September 2022 date. Curiously as well, the court clerk, at the outset of that 8 August status hearing on the yet-unconsolidated 29 May 2022 information, makes a declaration that the Applicant is "self-represented", a unusual comment for a clerk to make.

Three days later, on 11 August 2022, the Applicant was deliberately excluded from the conference call by the manager of court staff, Meaghan Gillis, and told to "wait" in one courtroom while her hearing, she would later learn, was obviously being held between the Court and counsel in another. Only after the proceeding had concluded was the Applicant instructed by Ms. Gillis to enter another courtroom via conference call, which was also not responding. The Applicant then contacted Ms. Gillis via email again, and was then informed by her that she had spoken with the court clerk and that the matter had been "put over" to 22 August 2022. The Applicant spent over an hour-and-a-half waiting on the phone that day. (***See Tab 6, Email from the Applicant to Ms. Gillis, 30 Aug 2022 8:25 a.m.***)

After the hearing from which the Applicant was excluded, the Crown then appeared before Judge Murphy in an altogether different courtroom, where the court clerk wrongly states that the Applicant, "hasn't called in". That same clerk had already spoken with Ms. Gillis and knew otherwise. It is also absurd on the face of it that the Crown would attend a hearing with the first judge and then attend at an altogether different courtroom afterward to ask the Court to endorse the information in a courtroom that was not addressing her matter. The exchange amongst the clerk, Judge Murphy, and Crown counsel are at once peculiar in the 11 August 2022 audio which was provided to the Applicant. Again, the Applicant seeks all audio for "any and all" hearings for which she was not present.

7. CJ Williams and Judge Murphy lack jurisdiction to deal with the "911" breaches before them. In addition, on 22 August and 27 September 2022, Judge Sarson adjudicated on substantive matters related to the Applicant's applications without any jurisdiction to to so under s. 669.2(2) of the *Code*. (See *R. v. Dempster*, 2005 NLCA 73, paras 29-37) Notwithstanding Judge Chisholm's lack of jurisdiction to adjudicate on the Applicant's guilt on 7 December 2021, the only option that Judge Sarson had available to him following Judge Chisholm's adjudication was to proceed to sentencing, which, in this case, would be a miscarriage of justice.

Interim orders proposed

The Applicant requests the following interim orders:

1. An interim order in the nature of *mandamus* directing the NSPC court services and/or the Department of Justice to provide the audio and documentation sought by the Applicant since early 2020;
2. An interim order in the nature of prohibition directing the NSPC to cease to take any further action against the Applicant pending the outcome of this *certiorari* application;

Orders proposed

At the conclusion of the review, the Applicant requests the following orders:

1. A declaration that jurisdiction has been lost over both the Applicant and the offences by the NSPC for informations dating between 25 April 2019 and 29 May 2022;
2. An order in the nature of *certiorari* quashing all informations, warrants, undertakings, and recognizances which are null and void.

You may participate

You may participate in the judicial review if you file a notice of participation no more than ten days after the day a copy of this notice for judicial review is delivered to you. Filing the notice entitles you to notice of further steps in the judicial review.

Record to be produced

The Applicant foresees no difficulty in obtaining the record, the contents of which should be in the possession of the NS Provincial Court and/or the Department of Justice, and that such record should be compiled and delivered to the Court and to the Applicant within a timeline to be directed by the Court at the hearing of the Motion for Directions.

The record will contain all documents in the possession of the NS Provincial Court and/or the Department of Justice, and all documents relating to the NSPC's failure to comply with the mandatory provisions of the *Criminal Code*, as well as breaches of natural justice.

Notice to decision-making authority

The Respondent is required by Civil Procedure Rule 7 (Judicial Review and Appeal) to file one of the following no more than five days after the day the decision-making authority is notified of this proceeding by delivery of a copy of this notice for judicial review:

- a complete copy of the record, with copies of separate documents separated by numbered or lettered tabs;
- a statement indicating that the decision-making authority has made arrangements with the Applicant to produce of the record, providing details of those arrangements, and estimating when the return will be ready;

- an undertaking that the decision-making authority will appear on the motion for directions and will seek directions concerning the record; or
- a summary of reasons given orally without a record and your certificate the summary is accurate, if you gave reasons orally and not on record.

If you fail in this regard, a judge may order costs against you including a requirement that you indemnify each other party for any expenses caused by your failure, such as expenses caused by an adjournment if that is the result.

Stay of proceedings or other interim remedy

The Applicant will make a motion for an interim stay of the enforcement of the decision under judicial review. The motion will be filed on 11 October 2022, and will be set for the same time as the motion for directions.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary, The Supreme Court of Nova Scotia, The Law Courts Building, 1815 Upper Water Street, Halifax, NS B3J 1S7. P: 902.424.4900, F: 902.424.0524.

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Applicant designates the following address:
18 Symonds Street, Dartmouth, Nova Scotia B3A 3L2 or wanda@wandacummings.com.

Documents delivered to this address are considered received by the Applicant on delivery. Further contact information is available from the prothonotary.

Motion for date and directions

On Wednesday, 26 October 2022, at 11:00 a.m., the Applicant will appear before a judge in Chambers at the The Law Courts Building, 1815 Upper Water Street, Halifax, Nova Scotia to make a motion for an order giving directions for the judicial review, including a date and time for the hearing of it. The judge may make an order or provide directions in your absence if you or your counsel fail to attend, and the court may determine the judicial review without further notice to you.

Signature

Signed 5 October 2022.

Wanda Cummings, Applicant

Prothonotary's Certificate

I certify that this Notice for Judicial Review was filed with the Supreme Court on 5 October 2022.

Prothonotary

Caroline McInnes
Prothonotary

Appendix "B"

REGISTRAR
Nova Scotia Court of Appeal
NOV 22 2022
HALIFAX, N.S.

Form 90.06

2022

C.A. No. 519289

NOVA SCOTIA COURT OF APPEAL

Between:

WANDA CUMMINGS — APPELLANT

- and -

HER MAJESTY THE QUEEN — RESPONDENT

Notice of Appeal (General)

To: **The Honourable Justice Scott Norton**
Supreme Court of Nova Scotia
The Law Courts Building
1815 Upper Water Street
Halifax, NS B3J 1S7
P: 902.424.7968 or
902.424.8962
F: 902.424.0524
E: HalifaxSupremeCourt@courts.ns.ca

Jeremy Smith / Honourable Brad Johns
for the Attorney General of Nova Scotia
and the Minister of Justice
1690 Hollis Street, P.O. Box 7
Halifax, NS B3J 2L6
P: 902.237.3075
F: 902.424.1730
E: jeremy.smith@novascotia.ca

Chief Judge Pamela Williams,
The Honourable Judge Brad Sarson, and
The Honourable Judge Alanna Murphy
Dartmouth Provincial Court
277 Pleasant Street
Dartmouth, NS B2Y 4B7
P: 902.424.2390
F: 902.424.0677
E: DartmouthProvincialCourt@courts.ns.ca

Erica Koresawa
for the Public Prosecution Service
Appeals and Special Prosecutions
Suite 500, 1625 Grafton Street
Halifax, NS B3J 3K5
P: 902.424.8734
F: 902.424.8440
E: erica.koresawa@novascotia.ca

Appellant appeals

The appellant appeals from the whole of the judgment dated 26 October 2022 in the proceedings in the Supreme Court of Nova Scotia showing Court number Hfx. No. 518195 made by the Honourable Justice Scott Norton.

Order or decision appealed from

The decision was made on 26 October 2022. It was made at Halifax, Nova Scotia.

Grounds of appeal

The grounds of appeal are:

1. The judge below erred in summarily dismissing the Applicant's Notice for Judicial Review as a single judge on a Motion for Directions and an interim Motion for *Mandamus* (court record and document production) and Prohibition:
   a) Without requiring from the Respondents that the evidence and the lower court record be properly before him, as is mandatory under both the *Civil Procedure Rules* (Rule 7) and the *Criminal Code* (s. 780); and in contravention of both the *Rules* and the *Code*;
   b) Without any Notice of Participation having been filed by any of the Respondents;
   c) Without any representation of any kind on the part of the Respondent, the Nova Scotia Provincial Court, at the hearing;
   d) With evidence having been filed by the Applicant showing the merit and appropriateness of the Judicial Review, and without any denial from the Respondents that the breaches and documents being sought by the Applicant formed part of the lower court record and should have been ordered produced for the purpose of the Judicial Review proper;
2. The judge below erred in summarily dismissing the Applicant's Notice for Judicial Review as a single judge on the Motion for Directions without considering that the decision infringed the Applicant's *Charter*, procedural, substantive, and statutory rights, and that no other remedy, including an appeal, was available to the Applicant, thereby leaving her victim to further abuses of process and a miscarriage of justice;
3. The judge below erred in summarily dismissing the Applicant's Notice for Judicial Review without the Respondents having advanced any legal argument or evidence, or any right to request a dismissal;
4. The judge below erred in stating and applying a 25-day limit with respect to the Applicant's Notice for Judicial Review having been filed where the Notice had, in fact, been filed within the prescribed time limits, and as was openly "accepted" as being filed within the prescribed time limits by the "watching brief" Respondent, the PPS;
5. The judge below erred in disregarding the six-month application with respect to a breach of natural justice on 11 August 2022 (and/or other breaches thereabout) wherein the Applicant had not been successful in obtaining the decision or the nature of the decision from the Respondents;
6. Any other ground as this Honourable Court may deem just and fit.

Authority for appeal

Judicature Act, RSNS 1989, c 240, s. 38
Canadian Charter of Rights and Freedoms and the *Constitution Act*, 1867
Criminal Code, RSC, 1985, c. 46, s. 784
Nova Scotia Civil Procedure Rules, Rules 90.02, 90.04, and 90.06
The common law and any other statutes such as the Applicant may advise

Order requested

The Appellant says that the judgment appealed from should be reversed and set aside, and a declaration made that the Nova Scotia Provincial Court has lost jursidiction over the Appellant and matters concerning the Appellant; and that, wherein due process had been denied in the Nova Scotia Supreme Court, on an interim motion to be filed prior to the Motion for Date and Directions, pursuant to Rule 82.22(3), the Respondents be properly put to the mandatory onus of producing the lower court record for the purpose of Judicial Review in the Nova Scotia Supreme Court or in this Honourable Court.

Motion for date and directions

The appeal will be heard on a time and date to be set by a judge of the Court of Appeal. The Appellant must not more than eighty days after the date this notice is filed, make a motion to a judge of the Court of Appeal to set that time and date and give directions. You will be notified of the motion.

Contact information

The Appellant designates the following address:
18 Symonds Street, Dartmouth, Nova Scotia B3A 3L2 or wanda@wandacummings.com.

Documents delivered to this address will be considered received by the Appellant on delivery. Further contact information is available to each party through the prothonotary.

Signature

Signed 24 November 2022.

Wanda Cummings, Appellant

Registrar's Certificate

I certify that this Notice of Appeal was filed with the Court on 24 November 2022.

JESSICA BOUTILIER
Deputy Registrar
of Court of Appeal