

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: Her Majesty the Queen v. Richard Bagnell, 2004 NSPC 29

Date: 20040511
Docket: 1260019
Registry: Sydney

Between:

Her Majesty the Queen

v.

Richard Bagnell

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Judge: The Honourable Judge A. Peter Ross

Heard: August 8th, 2003, Baddeck, Nova Scotia
September 24th, 2003, Sydney, Nova Scotia

Written Decision: May 11, 2004

Summary:

The Defendant, intending to build a residence on property fronting Baddeck Bay, sought the usual approvals for septic disposal, etc. His application was referred to the federal Department of Fisheries and Oceans because of concern about the impact on a tidal pond thought to contain fish habitat. While the applications were still pending, the Defendant did some infilling despite an indication from DFO that they could not support approval of the plans as originally submitted. Subsequently fisheries officers and others entered upon the property, without the Defendant's knowledge or consent, and without warrant, to make observations, take photos, and conduct sampling. Later still, the Defendant's application was formally rejected and he was charged with harmful alteration of fish habitat. Further entry and evidence-gathering was done after the charge was laid.

Issues:

Were the fishery officers acting lawfully within the inspection powers given to them under s.49 of the Fisheries Act of Canada?

Did their entry and actions upon the Defendant's private property, in the circumstances, constitute an unreasonable search contrary to s.8 of the Charter?

Ought the evidence obtained be excluded at trial, pursuant to s.24(2) of the Charter?

Result:

The Defendant here had a diminished expectation of privacy, even in respect to his private land. First, his application for requisite regulatory approvals necessarily entailed involvement and scrutiny by officials charged with this responsibility, even though DFO was not the agency from whom approval was sought directly. Second, the relevant observations and resulting evidence largely concerned pre-existing features of the natural environment. Considering the inherent value of fish habitat, it was not unreasonable for officials to enter upon private land, even without warrant, so long as they were acting bona fides in the course of their duties to investigate possible degradation of the wetland. However, evidence gathered by entry upon the property after the laying of charges was ruled inadmissible at trial, considering the antagonistic relationship which then existed.

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