

CASE NO.

VOL. NO.

PAGE

IN THE PROVINCIAL COURT OF NOVA SCOTIA

[Cite as: R. v. Fraser, 2002NSPC006]

Between:

Her Majesty the Queen
and
Paul Garret Fraser

Judge A.P. Ross

Sydney, Nova Scotia

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Heard: At Sydney, Nova Scotia, on January 31, 2002

Decision: April 11, 2002

Subject: s. 129(a) Criminal Code - meaning of “obstruction” - “execution of duty”

Summary: The Defendant refused to leave the premises of the Department of Fisheries and Oceans as a protest against its refusal to issue him a licence. The police were called. The occupier directed the Defendant to leave. Police repeated the direction. When Defendant refused he was arrested and charged with obstruction of a police officer in the execution of his duty. Upon and after arrest the Defendant was peaceful and co-operative.

Issue: Was the direction to leave premises given by Police at the behest of the occupier given in his capacity as a peace officer such that the Defendant’s refusal to obey constituted obstruction of a peace officer in the execution of duty?

Result: Defendant found not guilty. While police possessed a valid arrest power under the Protection of Property Act, their direction did not convert an infraction of the Protection of Property Act into a criminal charge of obstruction. Any duty to obey was owed to the occupier, not to the police officer *qua* peace officer. Mere commission of an offence is not obstruction of police *per se*.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT’S DECISION.
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