

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Krzychowiec, 2004 NSPC 60

Date: 20040825

Docket: 1360629-33

Registry: Halifax

Between:

Her Majesty the Queen

v.

John Jan Krzychowiec

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Judge: The Honourable Associate Chief Judge R. Brian Gibson,
J.P.C.

Dates Heard: August 13, 2004
August 19, 2004

Date of Oral Decision: August 25, 2004

**Date of Written
Decision:** November 15, 2004

Subject: Sections 40 and 41 of the Criminal Code - defence of dwelling-house, raised as defence to three charges pursuant Sections 264.1(1)(a), one charge under Section 267(a) and one charge under Section 270(1)(a).

Summary: Three police officers gained unauthorized entry through the locked front entrance door of a multiple unit apartment building enabling them to knock on the apartment door where the accused resided and speak to the accused about a complaint they had received. That complaint, by police admission, did not disclose the commission of any offence by the accused, nevertheless the police had concerns about possible future conduct of the accused. An altercation between the accused and

police arose after the police refused to leave despite being informed by the accused that he did not want to speak to them and that he wanted the police to leave. Criminal Code charges arose from that altercation.

Issue:

The accused alleged that his Section 8 Charter rights were violated and sought exclusion of all evidence pertaining to the Criminal Code charges. This allegation involved consideration of whether the police had entered the accused's dwelling house and if so, whether they had any authority to do so. If, after considering the Charter issue, there was admissible evidence in support of the charges, the issue was whether the actions of the accused were justified by Sections 40 and 41 of the Criminal Code.

Result:

Held: That the hallway outside the accused's apartment was part of his dwelling-house. The police entry into the apartment building where the accused resided, although gained with the assistance of the superintendent, was unauthorized due to the absence of any consent or authorization given by the accused to the superintendent, or any other authorization. The unauthorized entry by the police to accused dwelling house violated the accused's Section 8 Charter rights.

Held: Notwithstanding the Charter violation, the exclusion of the evidence pertaining to the Criminal Code charges would not bring the administration of justice into disrepute.

Held: That the actions of the accused were justified under the provisions of Sections 40 and 41 of the Criminal Code when the police failed to leave the accused's dwelling-house after the accused had made it clear to them that he wished the police to do so. The accused was found not guilty of all charges.