

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** R. v. Lohnes, 2007 NSCA 24

**Date:** 20070221

**Docket:** CAC 267779

**Registry:** Halifax

**Between:**

Barry Russell Lohnes

Appellant

v.

Her Majesty The Queen

Respondent

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**Judge:** The Honourable Justice Roscoe

**Appeal Heard:** February 5, 2007

**Subject:** Criminal law, impaired driving, jury charge on presumption of care and control (s. 258(1) **Criminal Code**); Sentence appeal - step theory, gap principle

**Summary:** The appellant was convicted by a jury of impaired driving and driving while prohibited and sentenced to 6 months incarceration. He appealed his convictions and sentence.

**Issues:** Did the trial judge err in the jury charge regarding the presumption of care and control in s. 258(1) of the **Criminal Code**? Was the sentence unfit?

**Result:** Appeal from convictions and sentence dismissed. Any error in the original jury charge was corrected in the re-charge. The sentence was not manifestly excessive in the circumstances, given the appellant's record.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.**