

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. McLean*, 2009 NSCA 1

Date: 20090108

Docket: CAC 292129

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Alexander Dean McLean

Respondent

Restriction on Publication: pursuant to s. 486(4) of the Criminal Code

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: December 9, 2008

Subject: Crown appeal from failed application to have respondent declared a long-term offender.

Summary: The Crown applied under the **Criminal Code** Part XXIV for a designation that the respondent was a dangerous offender. The judge dismissed that application and considered whether he should be declared a long-term offender. The judge was not satisfied that the Crown had met the requirements of s.753.1 of the **Code** and dismissed the long-term offender application as well. At issue was whether the offender presented a substantial risk to reoffend.

Issue: Did the judge err at law by misinterpreting s.753.1(2) as determinative of the substantial risk requirement under s.753.1(1)(b)?

Result: Appeal allowed. The Crown met the burden of establishing

beyond a reasonable doubt that there is a substantial risk that the offender will reoffend. Section 753.1(2) is a deeming provision. If the offender and offence fit within that subsection he shall be found to present “a substantial risk to reoffend”. However, even if the requirements of s.753.1(2) are not satisfied, the offender may still be found to present a substantial risk to reoffend pursuant to s.753.1(1)(b).

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 16 pages.