

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Ryan*, 2011 NSCA 30

**Date:** 20110329

**Docket:** CAC 327746

**Registry:** Halifax

**Between:**

Her Majesty The Queen

Appellant

v.

Nicole Patricia Ryan

Respondent

**Restriction on publication:** Pursuant to s. 486.5(2) of the *Criminal Code of Canada*.

---

**Judge:** The Honourable Chief Justice Michael MacDonald

**Appeal Heard:** January 25, 2011, in Halifax, Nova Scotia

**Subject:** **Criminal law, counselling to commit murder, defence of duress, spousal abuse, battered wife syndrome.**

**Summary:** The appellant tried to take a contract out on her estranged husband's life. Fortunately, she failed because the man she approached to commit the crime was an undercover R.C.M.P. officer. She was charged with counselling to commit murder.

At trial, the appellant admitted the accusation but claimed that she was acting under duress. Essentially, she asserted that she was the victim of years of abuse at the hands of her husband who threatened to kill her and their child. She believed that he would act on those threats and that the police, having been contacted on numerous occasions, would be unable to prevent it. This, she felt, left her essentially with no other reasonable option.

The appellant was acquitted at trial and the Crown now appeals to this court.

**Issues:** The Crown raises two issues on appeal. The first questions whether the defence of duress could even be raised in this fact scenario. That plea, the Crown asserts, applies only when an accused is forced by threats to commit an offence against a third party. Here the targeted victim was not a third party, but the person allegedly uttering the threats.

The second issue involves the Crown's alternative submission that the judge erred in finding that the accused's defence of duress had an air of reality. This submission has two prongs. Firstly, the Crown asserts that the judge applied a deficient legal test when considering the air of reality question. Secondly, the Crown asserts that the judge erred in concluding that this defence had an air of reality based on the evidence presented.

**Result:** The trial judge did not err in considering the defence of duress. Although normally used when one person, through threats, coerces a second person to do harm to a third person, the defence of duress also extends to the unique facts of this case.

The trial judge did not err when he found that the defence in this case had an air of reality. Furthermore, although not appealed, the judge made strong factual findings to support his conclusion that once the appellant raised an air of reality for this defence, the Crown failed to disprove its existence beyond a reasonable doubt.

The appeal is dismissed and the acquittal verdict stands.

**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 65 pages.**