NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. K.D.S.*, 2017 NSCA 20

Date: 20170301
Docket: CAC 451901
Registry: Halifax

Between:

K.D.S.

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: s. 486.4 of the *Criminal Code*

Judges:	MacDonald, C.J.N.S.; Hamilton and Fichaud, JJ.A.
Appeal Heard:	November 23, 2016, in Halifax, Nova Scotia
Held:	Appeal allowed and new trial ordered, per reasons for judgment of MacDonald, C.J.N.S.; Hamilton and Fichaud, JJ.A. concurring
Counsel:	Zebedee P. Brown, for the appellant Marian Fortune-Stone, QC, for the respondent

Order restricting publication – sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 172.2, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with stepdaughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (a)(i) to (iii).

Reasons for judgment:

[1] The main issue in this appeal is whether the appellant's sexual exploitation and sexual assault convictions must be set aside as a result of a serious mistake made by his counsel. Specifically, counsel failed to tender certain exhibits provided by his client. The question for us is whether that cost the appellant a fair trial, thereby constituting a miscarriage of justice.

BACKGROUND

The Trial

[2] HM is now a university student. Before Provincial Court Judge, Paul Scovil, she testified to being sexually assaulted as a child by her then stepfather, the appellant. She would have been in grade primary or one at the time. The allegations are terrible, including forced oral and anal sex. Judge Scovil explained:

> [3] As indicated HM started school when her family lived on S Street. She attended A Elementary School. She also described in detail the floor plan of the family home on S Street. Her mother worked outside the home during this period and the accused was a truck driver. Given that her mother worked shift work at a local call center, and that the accused was sometimes outside of the home with his work, there was a collection of babysitters for HM consisting mainly of family and neighbours.
>
> [4] HM described two sexual encounters with her stepfather. The first occurred during the period when she was first beginning school. She recalled the accused telling her that she had a choice of either being assaulted orally or anally. While she had no independent recollection of prior sexual episodes, HM surmised that there was likely a history of that activity as she knew what those options meant. She testified that she chose to have sex orally and that she had to perform fellatio on the accused until he ejaculated. She further recalled that the phone rang shortly after the accused was done and that the person on the other end of the phone was her mother. The accused warned her not to tell her mother about what had occurred. She also recalled that the accused went and got her a glass of water.
>
> [5] The second incident was described by HM as occurring on a sunny day and described the accused having anal intercourse with her and that she could see during this incident out the window of her residence. She noted that it was a sunny day. She recalled the accused standing behind her with his hands on her hips as he anally penetrated her. She described afterwards going to the bathroom and having a white liquid come out of her anal area. The accused once again told her not to tell her mother.

[3] These events would have occurred in the months leading up to the appellant's separation from HM's mother and his leaving the family home. Although the record is not entirely clear, this appears to have been the winter of 2002. The judge explained:

> [6] Both incidents happened while HM lived on S Street and both occurred some months prior to the accused moving out of the family home, upon KS splitting up with HM's mother. The incidents she described occurred with no one being home except for her brother C. The evidence from HM and others described C as having developmental issues which led to the family locking him in his room from time to time. HM commented that during the second incident she could hear C yelling.

[4] At trial, the appellant maintained a complete denial. To support his position, he tried to demonstrate that his opportunity to commit these crimes would have been limited. His evidence included business records from his employer. Purportedly, they would demonstrate that, during the relevant time period, the appellant was either working fulltime or out of town completing an apprenticeship program.

[5] The problem is that his defence counsel, Mr. James White, tendered only one of the four documents the appellant provided him. The appellant's new counsel on appeal maintains that this omission jeopardized his fair trial. To support this contention, he has asked us to accept these three additional documents as fresh evidence. We accepted them provisionally, reserving judgment on their ultimate admission.

The Judge's Decision

[6] With HM's allegations pitted directly against the appellant's complete denial, credibility became Judge Scovil's primary focus. He explained:

> [28] The legal issues before this Court clearly surrounds the law relating to credibility. Wrapped up in this is an examination of credibility of both the accused and the complainant HM.
>
> [29] It is fundamental in this case, as in all cases before the criminal courts that the burden of proving the guilt of the accused rests squarely on the prosecution. Before any accused can be convicted of an offense the Court must be satisfied beyond any reasonable doubt of the existence of all the essential elements of the offence. (See *R. v. Vaillancourt* [1987] 2 S.C.R. 636). This principle of reasonable

doubt applies to the issues of credibility as well as it does facts. (See *R. v. Ay* [1994] B.C.J. No. 2024 B.C.C.A.).

...

[33] In turning to the assessment of credibility of the witnesses I must keep in mind the test as set out in *R. v. Faryna and Chorney* [1952] 2 D.L.R. 354 where Justice O'Halloran of the British Columbia Court of Appeal stated:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short the real test of the truth of the story of a witness in such a case must be the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place in those conditions.

[7] The judge was also careful to respect the presumption of innocence:

[30] It is imperative as well that the trier of fact in these types of cases keeps at the forefront of his or her mind the definition of "reasonable doubt" as set out by the Supreme Court of Canada in *R. v. Lifchus* [1997] 3 S.C.R. 320.

[31] In cases such as this, the Court must not view it as being simply an either or choice between the evidence of the complainant and that of the accused. To do that would be abandoning the principles of ensuring that the Crown has proven each and every element of the offence beyond a reasonable doubt.

[32] I must also apply in this case those principles set out in *R. v. WD* [1991] 1 S.C.R. 742. If I believe the accused in his denial of sexual activity with HM, I must acquit him. If I am left unsure of whether I believe the accused or HM I must acquit. If I disbelieve the accused but his evidence, or that of other defense witnesses, leave me with a reasonable doubt then I must acquit. If I reject the whole of the evidence of the accused, then even before I can convict I must be convinced beyond a reasonable doubt of the guilt of the accused on the whole of the evidence.

[8] Then, after articulating the applicable legal principles, the judge completely rejected the appellant's denial:

[34] The evidence given by the accused in its entirety is incredible. I reject his testimony. His evidence regarding his workdays is exaggerated in order to make it appear that he was never at home but spent his time at work. His evidence consisted of working 8 a.m. to 5 p.m. at Peterbilt, working away from home weeks at a time on long-haul trucking runs into being at home playing video games with his nephew six hours each day. His log book evidence did not support

> his testimony. Further on cross-examination he agreed he would have the opportunity to be alone with the children, including the complainant, during the time in question. Presumably this was to lead evidence that showed a lack of opportunity to commit the offences. Instead the evidence showed a lack of credibility.

[9] Note that the appellant's attempt to demonstrate limited opportunity appears to have done more harm than good in that it "showed a lack of credibility". That finding figures prominently in my analysis that follows.

ANALYSIS

[10] The *Criminal Code* authorizes this Court to set aside a conviction if it represents a miscarriage of justice [s. 686(1)(a)(iii)]. Furthermore, a conviction grounded on an unfair process would be considered a miscarriage of justice. Cromwell, J.A. (as he then was) in *R. v. Wolkins*, 2005 NSCA 2 explains:

> **88** But what is a miscarriage of justice?
>
> **89** The clearest example is the conviction of an innocent person. There can be no greater miscarriage of justice. Beyond that, it is much easier to give examples than a definition; there can be no "strict formula ... to determine whether a miscarriage of justice has occurred": *R. v. Khan*, [2001] 3 S.C.R. 823 per LeBel, J. at para. 74. However, the courts have generally grouped miscarriages of justice under two headings. The first is concerned with whether the trial was fair in fact. **A conviction entered after an unfair trial is in general a miscarriage of justice**: Fanjoy, supra; *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont. C.A.) at 220-221.
>
> Emphasis added.

[11] So how serious was this error? Did it cost the appellant a fair trial? For the reasons that follow, I conclude that it did. The convictions must, therefore, be set aside.

[12] The significance of this error is best understood in the context of the appellant's testimony about his work history generally and specifically about the one work record that was tendered. The appellant began this aspect of his direct evidence by highlighting the fact that in June of 2001, he received his diploma in heavy equipment repair.

> Q. Okay. Now we have some employment records here. Let's start in 2001. Where were you working in 2001?

A. Well, in 2001 until June, I was still in school at Nova Scotia Community College, and I was working at Peterbilt in Nova Scotia in 2001.

Q. And what hours did you have at Peterbilt?

A. Well, it was a regular shift, 8 to 5, but I was also on-call with the service.

Q. I'm going to show you Defence Exhibit 5, I think.

THE COURT: Not Defence exhibit. It's ...

MR. WHITE: Pardon me?

THE COURT: It's an exhibit of the trial.

MR. WHITE: Yeah, okay.

EXHIBIT 4 - NSCC DIPLOMA FOR HEAVY EQUIPMENT REPAIR IN THE NAME OF KS (MARKED AND ENTERED)

THE CLERK: Exhibit 4.

MR. WHITE: Exhibit 4?

THE COURT: 4?

MR. WHITE: Just one, yeah. Can you tell us what this is?

A. This is my diploma from Nova Scotia Community College for my heavy-duty equipment repair course.

Q. And it indicates that you graduated on the 14th day of June 2001?

A. Yes.

[13] He then testified to working fulltime at Peterbilt after graduation.

Q. And after you graduated, you worked for Peterbilt?

A. Yes.

Q. And where was that?

A. Harrington Road in Kentville-Coldbrook. I don't know what's ...

Q. Okay. And what were your hours there?

A. It was a regular shift, 8 to 5 but, again, I was on-call as well.

Q. And so that would have been for the balance of 2001 and into 2002.

A. Yes, pretty much all of 2002 I was there as well.

Q. And where was A working at that time?

A. 2001, well, she ... I can't remember her working anywhere before online support.

Q. Yes. And what time did she ... when did she start that position?

A. I would say end of maybe July, August maybe of 2001.

[14] Then the one work record entitled "Record of Hours in Occupation" was introduced as exhibit 5. It went in without objection, despite it not being an original document and there being no attempt to follow the process for tendering business records. A copy is attached as Appendix A.

[15] Once tendered, the appellant spoke to the document in his direct evidence. Note he again purported to work fulltime during the relevant time period:

Q. Perhaps you could tell us what that is.

A. Thank you. This is my log book hours from my apprenticeship.

Q. And your apprenticeship was after your course.

A. After ... yes. I worked up until January of 2002, and then I went to UCCB Cape Breton for my first year of apprenticeship.

Q. Okay. And what dates were you in Cape Breton?

A. January ... I started in January and I was home the end of February, February 24th, I believe it was.

Q. And at that time, you moved into your sister's place.

A. Yes, shortly after I got back, yes.

Q. Yeah. And while you were at UCCB, what were your hours?

A. It was basically 8 to 5. It was school hours is what it was. I wasn't working. This was my apprenticeship courses ...

Q. Right.

A. ... that I had to complete.

Q. And when would you drive up?

A. I drove up in January and ...

Q. And during the week.

A. Yeah, yeah.

Q. Were you home on the weekends?

A. I think I come home maybe two weekends through the eight weeks.

Q. Okay.

A. And it was travelling with someone so ...

Q. And when you came home, would you come home Friday night or Saturday or ...

A. It would be Friday night so ...

Q. And then you ...

A. I wouldn't get back until late Friday.

Q. And then you would leave again when?

A. Sunday.

Q. At what time?

A. Sunday afternoon around noon.

Q. Okay.

A. Because it's a six-hour drive back to UCCB so ...

[16] It is significant that the appellant was asked about only one entry: namely his time as an apprentice at University College of Cape Breton from January 7th, 2002 to February 22nd, 2002.

[17] Yet, on cross examination, Crown counsel zeroed in on the first entry – his time with "Peterbilt of NS", highlighting that it did not support fulltime work:

Q. So shown here in Exhibit number 5, it has your record of hours in the occupation.

A. Uh-huh.

Q. And this is for your apprenticeship.

A. Yes.

Q. And it has you working at Peterbilt Nova Scotia from it looks like April 30th, 2001 up until, if I'm reading correctly, January 4th of 2002.

A. Okay.

Q. And for a total number of 240 hours at Peterbilt. Is that right? Does that sound about right to you?

A. I was at Peterbilt almost two years. But yeah, by this, that's what it's saying there, yes.

Q. Okay.

A. April 2002.

Q. So ... yeah, so from April until January, April 2001 until January 2002, you worked out there for 240 hours.

A. Yes.

Q. And that doesn't sound like necessarily full-time employment to me.

A. It was.

Q. It was?

A. Yes.

Q. 240 over that period?

A. Yeah.

[18] It is clear that the Crown was using this document to attack the appellant's credibility. He testified to working fulltime at Peterbilt. Yet the Crown used this document to suggest that he worked only 240 hours for the roughly eight months from April 30th, 2001 to January 4th, 2002. Based on a 40 hour week, that would represent only six weeks of work. This would clearly serve to hurt the appellant's credibility and, as I will explain, puts Mr. White's error into sharp focus.

[19] Yet note the business record attached as Appendix B. It is one of the documents that Mr. White failed to tender. Had it been tendered, based on the trial judge's stated approach to credibility, the damage to the appellant's credibility would likely have been mitigated.

[20] For example, this record is signed by the same "Mike Blenus" on behalf of Peterbilt. It purportedly overlaps the time period referenced in exhibit 5. It demonstrates two things. Firstly, it would appear that Crown Counsel misread exhibit 5 (albeit innocently). What he thought was a "4" in the first entry is clearly a "7", meaning that the timeframe referenced in exhibit 5 was actually from July 30th, 2001 (as opposed to April 30th, 2001) to January 4th, 2002. This would be consistent with the appellant's June 2001 diploma and his going to work there "after graduation". That would mean 240 hours over five as opposed to the suggested eight months.

[21] More importantly, however, this new document contradicts exhibit 5 in that it shows more hours over a shorter time frame – 640 from July to October. Based on a 40 hour week, 640 hours would translate into 16 weeks. Although we do not know the beginning date in July or the ending date in October, this would appear to be consistent with fulltime work, as the appellant contended.

[22] It is clear that the Crown's effort to use exhibit 5 to impeach the appellant's credibility worked. It left the judge to conclude: "[h]is evidence regarding his workdays is exaggerated…" and "[i]nstead the evidence showed a lack of credibility." More importantly, the judge highlighted no other inconsistences that he felt damaged the appellant's credibility.

[23] All this makes Mr. White's error very significant and, with credibility being so central to the trial, in my view, it cost the appellant a fair trial.

[24] In reaching this conclusion, I am fully aware of the Crown's able and detailed submission that the proposed fresh evidence does nothing more than add further confusion to the already confusing exhibit 5. None of the four workplace documents would have helped him, especially since he admitted having the opportunity (however limited) to commit these crimes. That might be so. But that is not the issue. The point is not that exhibit 5 was of no help. The point is that, whether it should have been tendered or not, it appeared to have seriously hurt the appellant's case. Based on the trial judge's stated approach, this damage would likely have been mitigated had Mr. White done what his client had requested. In a case that was all about credibility, this represents a miscarriage of justice that must be corrected.

The Fresh Evidence Motion

[25] This conclusion directly impacts my ruling on the proposed fresh evidence. The appellant's package consists of: (a) the three untendered documents; (b) the appellant's affidavit explaining that it always had been his instructions to tender all four documents; and (c) an affidavit from Mr. White essentially admitting that it was all his fault and that his failure to tender resulted from inadvertence as opposed to trial strategy.

[26] What then should be admitted and why?

[27] The Supreme Court of Canada, in *R. v. Stolar*, [1988] 1 S.C.R. 480, suggests the following process for dealing with fresh evidence motions:

> [14] The procedure which should be followed when an application is made to the court of appeal for the admission of fresh evidence is that the motion should be heard and, if not dismissed, judgment should be reserved and the appeal heard. In this way, the court of appeal has the opportunity to consider the question of fresh evidence against the whole background of the case and all the other evidence in the case. It is then in a position where it can decide realistically whether the proffered evidence could reasonably have been expected to affect the result of the case. If, then, having heard the appeal, the court should be of the opinion that the evidence could not reasonably have affected the result, it would dismiss the application for the introduction of fresh evidence and proceed to a disposition of the appeal. On the other hand, if it should be of the view that the fresh evidence is of such nature and effect that, taken with the other evidence, it

> would be conclusive of the issues in the case, the court of appeal could dispose of the matter then and there. Where, however, the fresh evidence does not possess that decisive character which would allow an immediate disposition of the appeal but, nevertheless, has sufficient weight or probative force that if accepted by the trier of fact, when considered with the other evidence in the case, it might have altered the result at trial, the court of appeal should admit the proffered evidence and direct a new trial where the evidence could be heard and the issues determined by the trier of fact.

[28] We have followed that process so far, by hearing the motion and reserving judgment until conducting the appeal proper.

[29] Continuing with the *Stolar* process, my analysis above demonstrates that, while far from dispositive, the first of the three omitted documents "has sufficient weight [and] probative force that if accepted by the trier of fact, when considered with the other evidence in the case, it might have altered the result at trial". As such it should, along with the supporting affidavits, be admitted on appeal.

[30] The remaining two omitted documents offer nothing to my analysis, and I would reject them for the purposes of this appeal.

[31] In reaching this conclusion, I acknowledge that, typically, we should not admit documents that, if by due diligence, could have been tendered at trial. See *R. v. Palmer*, [1980] 1 S.C.R. 759. However, this pre-requisite is deemed to have been met when, like here, the failure to tender results from ineffective counsel. See *R. v. Appleton*, [2001] O.J. 3338 at ¶ 23 and ¶ 24.

[32] I also wish to acknowledge again the Crown's concern about the relevance and admissibility of all these documents, including exhibit 5. I agree that they could indeed be irrelevant or otherwise inadmissible. However, I have assessed relevance only for the purpose of this appeal. It is as simple as this. A document that was tendered without objection, appeared to hurt the appellant's credibility. A second document was supposed to have been tendered (no doubt as well without objection). Had it been tendered, based on the judge's stated approach to credibility, it would likely have undone some or all of the harm. Whether any, some, or all of these documents would be considered relevant or otherwise admissible at a new trial, will be for that judge to decide.

[33] My conclusion on this issue disposes of the appeal. I need not consider the appellant's other grounds. However, I will briefly address just one. I do so to provide guidance to future appellants.

[34] It involves the appellant's third issue where he challenges the judge's handling of the evidence. He identifies three subjects, namely: (a) the timing of the alleged offences; (b) the complainant's demeanor, and (c) the appellant's evidence about his pierced penis. The appellant explains the timing issue this way:

> 56. At its strongest — from the Appellant's standpoint — the evidence indicated that the two alleged assaults occurred close in time, shortly before April 1, 2002, a period when the Appellant was either attending classes in Cape Breton or was in Kentville but no longer babysitting the Complainant. This was meaningful circumstantial evidence, capable of supporting an inference inconsistent with the allegations. Even if the words used by the Complainant including "shortly after" and "within two months" were given a large and liberal interpretation, the narrowed period of the allegations set against the evidence of the Appellant's activities at specific times may still have been capable of contributing to reasonable doubt.
>
> 57. The trial judge did not consider the significance of the timing evidence as potentially affording circumstantial support for the Appellant; he did not, in fact, consider the timing evidence in detail at all. He restricted his analysis to confirming that the timing evidence was consistent with the Crown case in the broadest possible strokes, i.e. whether it fell within the period alleged on the information and whether the Appellant had *any* opportunity during that entire period to commit the offences. (*Decision at para. 34*).
>
> …
>
> [59] The "disconnect" in the Complainant's evidence of the timing was no less significant than the disconnect in the Appellant's work history evidence. The evidence on timing presented several facets that were capable of contributing to reasonable doubt and therefore warranted consideration in light of the whole of the evidence.

[35] In his demeanor issue, the appellant feels that the judge should have been more circumspect about HM's apparent normal behaviour after the alleged incidents:

> 72. Evidence of the Complainant's unchanged demeanour toward and around the Appellant was important circumstantial evidence, unchallenged and unanswered by the Crown, that should have been considered by the trial judge.

[36] The appellant describes the "pierced penis" issue this way:

> 73. The Appellant testified that several years prior to the offences, he had his penis pierced and acquired a penis ring called a "Prince Albert". A photograph taken three days before the Appellant testified showed the ring to be conspicuous

> and bulky. The Complainant was unable to remark on the presence of the ring, despite observing the Appellant's penis to the degree that she claimed to be "pretty sure" that he was circumcised. This inconsistency could reasonably have contributed to raising a reasonable doubt on the whole of the evidence, but again it was disregarded by the trial judge.

[37] Before us, the appellant has cast these issues as alleged errors of law. In my view, that is a mischaracterization. Instead, they ought to have been cast as an attack on the verdict.

[38] To explain, I must begin with the fundamentals. The *Criminal Code* allows only three ways in which a court of appeal can overturn a conviction; namely, an unreasonable verdict, an error of law or a miscarriage of justice.

> 686. (1) Powers – On the hearing of an appeal against a conviction or against a verdict that the appellant is unfit to stand trial or not criminally responsible on account of mental disorder, the court of appeal
>
> (a) may allow the appeal where it is of the opinion that
>
> (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
>
> (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
>
> (iii) on any ground there was a miscarriage of justice;

[39] Furthermore, not every error of law will lead to a conviction being set aside. Specifically, where no substantial wrong or miscarriage of justice results, we might allow the conviction to stand:

> 686. (1) Powers – On the hearing of an appeal against a conviction … the court of appeal…
>
> (b) may dismiss the appeal where
>
> …
>
> (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph *(a)* (ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred

[40] These three complaints target the judge's assessment of the evidence. As such, in my respectful view, they can only be viewed as attacking the verdict. In

other words, they must be addressed in the context of an alleged unreasonable verdict under s-s. 686(1)(a)(i).

[41] In this context, our role is limited. Saunders J.A. of this Court in *R. v. M*, 2012 NSCA 70 explains:

> [35] Whether a verdict is unreasonable is a question of law. Perhaps the most familiar test for deciding whether a verdict is unreasonable is to ask whether the verdict is one that a properly instructed jury or judge could reasonably have rendered. *R. v. Yebes*, [1987] 2 S.C.R. 168 (S.C.C.), and *R. v. Biniaris*, 2000 SCC 15 (S.C.C.). But that is not the only test. We may also find a verdict unreasonable if the trial judge has drawn an inference or made a finding of fact essential to the verdict that:
>
> > 1. is plainly contradicted by the evidence relied upon by the trial judge in support of that inference or finding; or
> >
> > 2. is shown to be incompatible with evidence that has not otherwise been contradicted or rejected by the trial judge.
>
> See for example: *R. v. P. (R.)*, 2012 SCC 22 (S.C.C.); *R. v. Sinclair*, 2011 SCC 40 (S.C.C.); *R. v. Beaudry*, 2007 SCC 5 (S.C.C.); and *R. v. Clark*, 2005 SCC 2 (S.C.C.).

[42] Here HM provided ample evidence to support the verdict. The judge addressed the evidence in a comprehensive way. He did not have to refer to every aspect. None of his findings were contradicted or incompatible with the evidence. I would dismiss this ground of appeal.

DISPOSITION

[43] I would allow the appeal and order a new trial.

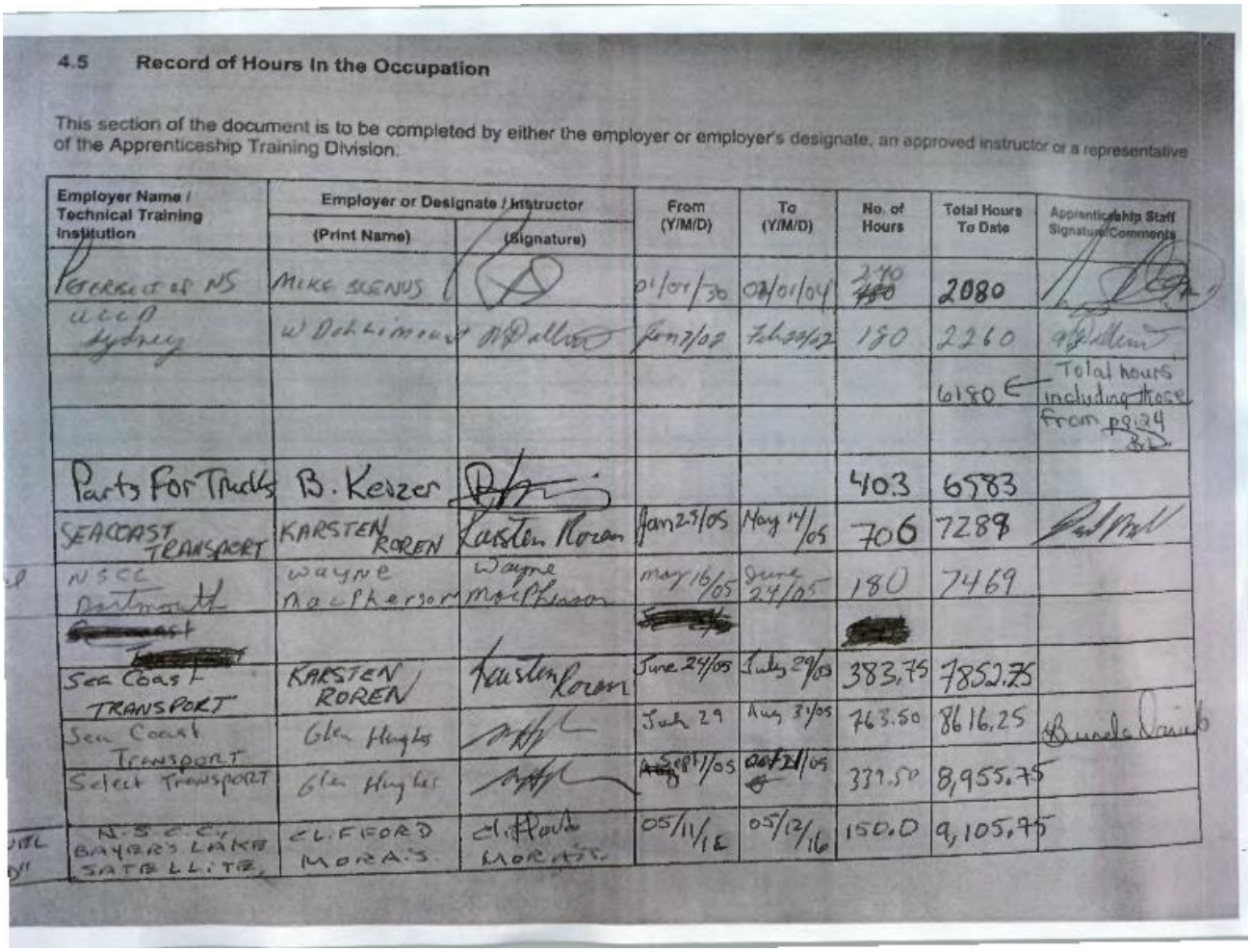
MacDonald, C.J.N.S.

Concurred in:

Hamilton, J.A.

Fichaud, J.A.

Appendix "A"



4.5 Record of Hours in the Occupation

This section of the document is to be completed by either the employer or employer's designate, an approved instructor or a representative of the Apprenticeship Training Division.

Employer Name / Technical Training Institution	Employer or Designate / Instructor (Print Name)	Employer or Designate / Instructor (Signature)	From (Y/M/D)	To (Y/M/D)	No. of Hours	Total Hours To Date	Apprenticeship Staff Signature/Comments
Province of NS	MIKE SIGNUS		01/01/30	02/01/04	~~270~~ ~~180~~	2080	
CCEP Sydney	W Dallimore	W Dallimore	Jan 7/02	Feb 28/02	180	2260	
						6180 ←	Total hours including those from pg 34
Parts For Trucks	B. Keizer				403	6583	
SEACOAST TRANSPORT	KARSTEN ROREN	Karsten Roren	Jan 23/05	May 14/05	706	7289	
NSCC Dartmouth	Wayne MacPherson	Wayne MacPherson	May 16/05	June 24/05	180	7469	
[redacted]			[redacted]		[redacted]		
Sea Coast TRANSPORT	KARSTEN ROREN	Karsten Roren	June 24/05	July 29/05	383.75	7852.75	
Sea Coast Transport	Glen Hughes		July 29	Aug 31/05	763.50	8616.25	
Select Transport	Glen Hughes		~~Aug 31~~ 1/05	~~Oct 21~~ /05	339.50	8,955.75	
N.S.C.C. BAYERS LAKE SATELLITE	CLIFFORD MORAIS	Clifford Morais	05/11/16	05/12/16	150.0	9,105.75	

Appendix "B"

On-the-Job Work Experience:

Employer Name	Employer Address	Supervisor	Dates		Hours Credited
			Start Date	End Date	
INTERBILT	[illegible]	MIKE [illegible]	JULY/2001	[illegible]/2001	640
Parts For Trucks	52 Wright Ave [illegible]	Blake Keizer			403
[illegible]	[illegible] Dr	[illegible]	Aug/2005	[illegible]	700

Technical Training:

Training Program	Technical Training Institution	Address	Graduation Date	Accreditation / Credit Number	* Hours Credited
TRUCK & TRANSPORT	KINGSTEC	[illegible] ST. KENTVILLE	[illegible]/2001		1200

* validate applicable technical training in section 3.5 (page 16) with "credit" stamp

Term of Apprenticeship: 8000

Less Initial Total Credit: 1840

Total Remaining in Apprenticeship: 6160

[signature]
Apprenticeship Training Division Representative

01/[illegible]/04
Date