NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Clancey***, 2003 NSCA 62

Date: 20030612
Docket: CAC 180927
Registry: Halifax

Between:

The Queen

Appellant

v.

Lennie Daniel Clancey

Respondent

Judge: Hamilton, J.A.

Appeal Heard: June 3, 2003

Written Judgment: June 12, 2003

Subject: ***S. 487.052 of Criminal Code, DNA Identification Act, DNA sample***

Summary: The trial judge refused to grant an order for a DNA sample when sentencing the Respondent following his guilty plea to a charge of aggravated assault. This crime would have been a primary designated offence as defined in s.487.04 of the Code had it been committed after the DNA Identification Act came into effect. The trial judge's decision suggests his understanding was that s.487.052 of the Code did not have as one of its purposes the solving of "cold crimes". There is no indication the Respondent's prior criminal record was considered. There is no indication the trial judge considered the complete lack of evidence that the order requested would constitute more than a minimal invasion of the Respondent's privacy or security of the person.

Issue: Did the trial judge err?

Result: Appeal allowed. One of the purposes of s.487.052 is to help solve "cold crimes". The trial judge should also have considered the respondent's prior criminal record. There was a complete lack of any evidence that the order would constitute more than a minimal invasion of the Respondent's privacy or the security of the person.