

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v MacDonald.*, 2014 NSCA 102

Date: 20141106
Docket: CAC 347642
Registry: Halifax

Between:

Erin MacDonald

Appellant

v.

Her Majesty The Queen

Respondent

Judge The Honourable Chief Justice Michael MacDonald and the Honourable Justice Jamie W. S. Saunders, concurring; The Honourable Justice Duncan R. Beveridge dissenting, in part.

Appeal Heard: June 9, 2014, in Halifax, Nova Scotia

Subject: Criminal law, *Criminal Code* s. 95(2); mandatory minimum sentences; *Charter of Rights and Freedoms*, s. 12 and s. 52; cruel and unusual punishment

Summary:

The Supreme Court of Canada restored the Appellant's conviction for possessing a loaded restricted firearm contrary to s. 95 of the *Criminal Code*, and remitted the matter to this Court to determine the constitutionality of the provision's three-year minimum sentence (when prosecuted by indictment). Depending upon that result, it also directed us to consider the appropriate sentence for that offence, and the

offences of possession of a weapon for a purpose dangerous to the public (s. 88) and careless handling of a firearm (s. 86).

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- Issues:**
1. Does this provision's three-year minimum offend s. 12 of the *Charter* by representing cruel and unusual punishment based,
 - (a.) on the particular circumstances of this case, or
 - (b.) on a reasonable hypothetical set of circumstances?
 2. If this provision does offend s. 12, is it nonetheless saved by s. 1 of the *Charter*?
 3. If the provision is unconstitutional and not saved by s. 1, what is the appropriate sentence for the s. 95 offence, and the offences under ss. 88 and 86 of the *Code*?

- Result:**
- 1(a.) This provision does not offend the *Charter* based on the particular circumstances of this case.
 - (b.) However, it does offend the *Charter* based on a reasonable hypothetical.
 2. Section 1 of the *Charter* does not save this provision.
 3. The appropriate sentence is a further 18 months but in the exceptional circumstances of this case, the enforcement of it is permanently stayed, and the sentences of time served for the ss. 88 and 86 offences are affirmed.
- Beveridge J.A. (dissenting) agrees with the majority on the constitutional issue but would impose a sentence of time served for all of the offences.

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 55 pages.