

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Dixon, 2009 NSPC 11

Date: February 11, 2009

Docket: Case Number(s)1879342

Registry: Halifax

Between:

The Queen

v.

Gary John Dixon

DECISION

Judge: The Honourable Judge Marc C. Chisholm

Heard: February 11, 2009, in Halifax, Nova Scotia

Charge: That on or about the 4th day of March, 2008 at or near Halifax, Nova Scotia, did knowingly utter a threat to Marc Perron to cause death to the Minister of Department of Community Services, Judy Streach, contrary to Section 264.1(1)(a) of the Criminal Code.

Counsel: Rick Woodburn, Provincial Crown
Wayne Bacchus, for the defense

By the Court:

[1] Mr. Dixon is charged that he, on March 4, 2008, did

knowingly utter a threat to Marc Perron to cause death to the Minister of the Department of Community Services, Judy Streach, contrary to Section 264.1(1)(a) of the *Criminal Code* of Canada.

[2] There is no dispute regarding the date, time and place of the incident or the identity of the persons involved. There is no dispute that on the morning of March 4, 2008, Mr. Dixon went to the building situate at 5675 Spring Garden Road in Halifax, Nova Scotia. That building houses the head office of the Department of Community Services, including the office of the Minister of Community Services. Mr. Dixon proceeded to the third floor of that building where he approached the Commissionaire's work station. The Commissionaire's duties include reception and access control to the offices of the Department. The Commissionaire on duty at the time was Mr. Marc Perron. A conversation took place between Mr. Dixon and Commissionaire Perron. The Crown alleges that during that conversation Mr. Dixon threatened to kill the Minister of Community Services. The Crown also alleges that, during a telephone conversation with Commissionaire Perron later the same day, Mr. Dixon repeated his threat to kill the Minister of

Community Services. The defendant denies uttering a threat to cause the death of the Minister of Community Services on either occasion. In the alternative, the defense argues that, if a threat to cause death was uttered, it was trivial in nature and The Court should apply the *de minimis* principle and enter an acquittal on that basis.

ISSUE

[3] The issue, then, is, clearly, does the evidence establish beyond a reasonable doubt that Mr. Dixon uttered a threat to Mr. Perron to cause the death of the Minister of Community Services? And, if so, should the *de minimis* principle apply?

EVIDENCE AND FINDINGS OF FACT

[4] I will review the evidence in some detail. The Court's findings of facts are based upon The Court's findings of credibility. As counsel are well aware, in a case such as this it is not a question of who The Court believes to be more credible. The Court must be satisfied beyond a reasonable doubt on the findings of fact. And where Mr. Dixon has given evidence in his own defense, if The Court believes his evidence, then he is entitled to be found

not guilty. If The Court doesn't believe his evidence, but his evidence raises a reasonable doubt as to what took place, then he is entitled to the benefit of that doubt. If The Court does not believe Mr. Dixon's evidence, and doesn't have any doubt in that regard, The Court must still consider all of the evidence and determine whether or not there is any doubt with respect to the allegation.

- [5] Mr. Dixon took the stand and gave evidence in his defence. Mr. Dixon testified that he is the common-law partner of Linda Richardson. They've been involved since about the year 2000 and have been cohabiting since around 2002. Ms. Richardson has two children from an earlier marriage. In 2002 those children were living with Ms. Richardson. According to Mr. Dixon, after he moved in with her and her children, Ms. Richardson's ex-husband complained to the Department of Community Services about Mr. Dixon living in the home with the children. This because, as Mr. Dixon admitted, he has prior convictions for sexual assault on a minor.
- [6] The Department responded to that complaint by conducting an investigation. The matter proceeded to the Family Court and, as I understand from Mr. Dixon's evidence, a ruling was made by the Family Court that the children would not be permitted to live with Ms. Richardson if Mr. Dixon was living

in the home with her. That decision, according to Mr. Dixon, was significantly influenced by a report completed by Ms. Darlene Whitman. Ms. Whitman, apparently, completed a study of the Dixon/Richardson home situation and filed a report with her findings and recommendations. Again, according to Mr. Dixon that report was given great weight by The Court. Since Mr. Dixon and Ms. Richardson continued to live together, the children were sent to live with their father.

[7] Mr. Dixon testified that, about a month before March 4, 2008, his mother-in-law gave him a clipping from the paper wherein it was reported that Darlene Whitman had resigned from her professional association, handing in her license to practice, as a result of concerns raised about her practice.

[8] Mr. Dixon stated that he didn't act on the article until March 4 because he wasn't sure what to do. He said that he and Ms. Richardson had discussed it. They thought about taking legal steps but couldn't afford a lawyer. He testified that they decided to refer the matter to the Department of Community Services hoping that they would take up the gauntlet. His intention was to go the Department head office to ask for an appointment to speak to the Minister to bring the matter to her attention.

- [9] He stated that he wanted to speak to the Minister because this matter was so important. He also testified that in his past dealings with Department officials they had put him off or put up road blocks. For that reason, he was not prepared to deal with those officials.
- [10] Given Mr. Dixon's view of the importance of the development regarding Ms. Whitman as set out in the news clipping, it was surprising to me that he took so long, about a month, before acting on the matter. Indeed, I noted that the news clipping was dated December 13.
- [11] On the morning of March 4, Mr. Dixon stated that he first went to the office of his MLA. The MLA was not in the office. He says that the MLA's secretary gave him the name and address of the Minister of Community Services and the name and number of the NDP Community Services critic, should he be unhappy with the Department of Community Services' response to his concern.
- [12] Again, so having waited for a month after receiving the important news clipping and deciding to bring it to the attention of the Minister of Community Services, he didn't go there first, he went to the MLA's office first. I asked myself why, and was he planning to use political pressure to achieve his goal rather than simply presenting the information to the

Minister of Community Services? Mr. Dixon didn't say why, specifically, he went to the MLA's office.

[13] Also, it seemed odd to me that after waiting all of this time before taking action on March 4, that he would go to the MLA's office without calling in advance to see if the MLA was going to be in the office so that he could see the MLA. But, perhaps that is just Mr. Dixon's way of operating, and I place little weight on that particular aspect of the matter.

[14] Mr. Dixon stated that he, after going to the MLA's office, proceeded to the head office of the Department of Community Services on Spring Garden Road. He went up to the third floor reception and Commissionaires' desk. There he met Commissionaire Perron. He testified that they exchanged greetings, after which Mr. Dixon indicated that he wanted to speak to the Minister. He testified that Commissionaire Perron asked him how he found the place. Mr. Dixon stated that he responded by saying that that didn't matter, or why did that matter? He stated that Commissionaire Perron asked him that three times and that made him somewhat upset and he said that, when seen on the video moving his hands up and down with the paper in his hands, that was at the point in time where this conversation was taking place and he was basically saying: "that doesn't matter how I found the place."

[15] Frankly, that explanation made very little sense to me. I wondered whether or not Mr. Dixon was suggesting that the Department of Community Services' head office was at a secret location unknown to the general public. And was he suggesting that he got the address from the MLA's office to confirm that this was a private location that people weren't expected to go to? Did he not know the office location before he left his home that morning intending to go to the head office of Department of Community Services? And he walked in on his own evidence, took the elevator or the stairs to the third floor and then approached the reception area for the offices. It didn't make a lot of sense to me that the Commissionaire who worked there as reception in a public office would be asking someone: "How did you find this place?" It just doesn't seem like a logical question in any way, shape or form.

[16] Mr. Dixon testified that he told the Commissionaire that the Department of Community Services was, in part, responsible, for the break-up of his family unit and that he wanted to see the Minister. He said the Commissionaire picked up the phone to call someone and then the second Commissionaire, Commissionaire Bauer, came out with his lunch. Commissionaire Perron completed his call and advised Mr. Dixon that the Minister was not in her

office, that the Minister's assistant wanted Mr. Dixon's name and address and the reason for wanting to speak to the Minister. Mr. Dixon testified that he wrote a note providing that requested information and that was about it. He left, hoping to hear from the Minister. He denied uttering a threat to kill the Minister during that time in speaking to Officer Perron.

[17] As to his emotional state that morning, in response to what he said was a question from Commissionaire Perron that he seemed upset, he said that he was upset. Later in his evidence on the same point he said he was a little upset. He said he was somewhat frustrated by roadblocks that had been put in his way by department officials in the past.

[18] He said I was probably a little loud, at first, a little agitated. He said I probably had a little bit of attitude. He said that the lack of action or inadequate action by the Department of Community Services in terms of his past complaints made him a little frustrated, not a great amount. He said he was irritated, probably talking loud. He said he wasn't agitated until he got to the Commissionaire's desk, but then later said: "I came in with attitude, a little bit of attitude." He said: "I was expecting to get the run around at the Minister's office." He said as he spoke to Commissionaire: "I was

somewhat agitated, a little bit, not very much.” He later said: “I was somewhat upset, slightly aggressive.”

[19] I listened carefully to Mr Dixon as he gave his evidence. He appeared to be an intelligent man. He listened carefully to the questions and gave what appeared to be a considered answer to each question. In speaking of his emotional state and his voice, volume of voice, he consistently added a qualifier to his statements--a little, somewhat, probably, slightly. He said the Department of Community Services was, in part, responsible for the break-up of his family. I felt, throughout, that Mr. Dixon was carefully minimizing his evidence. Mr. Dixon stated that after leaving the Department of Community Services, he went to the office of the NDP Community Services critic and advised him--Mr Zinck--of his situation. Then he proceeded home, arriving between 12:30 and 1:00 p.m.

[20] At home he was advised by Ms. Richardson of a message on the answering machine to please call Department of Community Services and he did so. He spoke again to Commissionaire Perron. He stated that he was agitated that the Commissionaire was calling and not the Minister or the Minister’s office. He told the Commissionaire that he wanted to talk to the Minister and not to the Commissionaire. He said that he apologized to the

Commissionaire and may have done so right at the beginning for the Commissionaire being put in this position and then he hung up on the Commissionaire without allowing him to continue the conversation. He said he viewed this call back from the Commissionaire as another slap in the face. He denied uttering a threat to kill the Minister of Community Services during the phone call.

- [21] He testified that he went to work at around 4:00 that afternoon and that at around 5:00, he received a call from Ms. Richardson at work, that she was in a near panic, and called to advise him that the police had been to their place looking for him but wouldn't say why. He said he didn't try to call the police from work, saying he was there to make up for lost time and didn't want to take the time to do so. He suggested that he wasn't supposed to make calls from work. He said he had no idea why the police were looking for him, that the only thing he'd done that day was to go to Department of Community Services. He said he figured that if they wanted to arrest him they would be back. Later he used the words, "if they were looking for him, they'd be back." But he initially used the words if they wanted to arrest him, they'd be back.

[22] I found that statement at the time extremely surprising that he would use that phrase for, on his evidence, he had done nothing inappropriate and nothing certainly criminal. So why would he be thinking that the police would want to arrest him, unless he knew that he had created a scene and uttered a threat? Or, is it just a fear or a suspicion of the police generally, perhaps due to a past history with the police? That statement certainly left me wondering about Mr. Dixon's evidence.

[23] After work, Mr. Dixon said he went home but didn't call the police for the same reason and that at about 10:30 or 11:00 o'clock, the police came to his home. He allowed them in. He was arrested for uttering a threat against the Minister. He alleged that the police were very, very aggressive with him, did not permit him to get properly dressed and put the cuffs on too tight. He said at one point he thought they were going to taser him. He said they took him on an obscure route and traveled fast to the police station, and that after he spoke to counsel, he understood he would be released, but the police laughed and told him he would not be released, he would be detained.

[24] That is my summary of the details of Mr. Dixon's evidence. I found key points of Mr. Dixon's evidence not to be logical or plausible, and not to be believable.

- [25] As mentioned, I found Mr. Dixon's explanation for being upset and gesturing up and down with his hand when speaking to the Commissionaire, that is, that the Commissionaire asked him several times how did he find this place, that did not strike me as believable.
- [26] I found that his repeated attempts to minimize and understate his actions were an effort by him to put himself in the best possible light. I found that his statement explaining why he didn't call the police, that is, that if they wanted to arrest him they'd be back, to be indicative of a knowledge on his part that he had created a scene and uttered a threat while at the office. I found his evidence careful, strategic and, at points, contrived.
- [27] In cross-examination, Mr. Dixon indicated that, after reading what is before The Court as Exhibit 4, a police note, he became suspicious that this uttering charge was concocted to divert attention from the Department of Community Services and the big problem regarding Ms. Whitman that he had attempted to bring to light. He suggested that this problem was so big that the Department couldn't or wouldn't deal with it, so this concocted charge was their means of avoiding having to deal with it. They were deterring Mr. Dixon or anyone else from raising the issue of Ms. Whitman and cases that depended on her evidence. Mr. Dixon used the terms "magician's trick" and

“sleight of hand” to describe his suspicion regarding the department and other officials.

[28] I have little doubt that Mr. Dixon’s suspects that to be so; however, I don’t see anything unusual in terms of trying to keep the Minister’s name out of the media in a circumstance such as this. And, on the other hand, if the Department of Community Services’ goal was to deter Mr. Dixon and others, I wondered why the department would want to reduce the amount of publicity rather than increase publicity to increase deterrence; and wasn’t the situation involving Ms. Whitman already somewhat public as a result of the earlier newspaper article?

[29] And, further, if the charge was concocted, as Mr. Dixon suspects, who made the decision? When was it made? It was obviously made quickly, given the timing of the call to the police and the events that followed. And who was involved in the conspiracy--the Department of Community Services? the Corps of Commissionaires, who are not employees of the Department of Community Services? The Crown Attorneys’ office? The police?

[30] If the threat allegation was concocted, I ask myself why didn’t the parties concocting the allegation indicate that both Commissionaires Perron and Bauer heard the threat? That would be a much stronger case for the Crown.

And, if this is all concocted, surely that would be a wise position to take.

And why disclose Exhibit 4--the note from the officer since Mr. Dixon would suggest that is evidence of the conspiracy.

[31] In my view, Mr. Dixon's suggestion of a conspiracy concocting a charge against him is not logical. There is no evidence to support the defense suggestion that this threat allegation is concocted to divert attention away from the Department of Community Services. Having said that, there is no burden on the defense to prove such an allegation or any other fact. The burden remains on the crown throughout to prove the allegation beyond any reasonable doubt.

[32] There were other witnesses called by the defence.

[33] Briefly, Constable Bricker testified and his evidence was essentially in relation to Exhibit 4--the communication between the crown and police regarding wording of the charge so as to keep the name of the minister out of the charge. In the end, I see that the minister's name is included in the charge. The evidence of Constable Bricker was not in dispute.

[34] The defense also presented Ms. Linda Richardson.

[35] Ms Richardson testified that she was home on March 4, 2008, and listened to the phone message from the Department of Community Services asking that

Mr. Dixon call them back. She brought that message to his attention when he returned around 12:30, noon hour, and he called back. She was in a position to hear his portion of the conversation. She said she heard nothing of any concern, did not hear Mr. Dixon use the word “kill.” She said Mr. Dixon was not aggravated, although he wasn’t extremely happy that the Commissionaire and not the Minister’s office had called back, but he spoke reasonably.

[36] She stated that Mr. Dixon went to work that afternoon and that between five and six the police came to her home asking for Mr. Dixon. They refused to say why they wanted to see him. She said that she told them he was at work and didn’t know the address of his workplace in Halifax. That after the police left, she called Mr. Dixon at his work and told him of the police visit.

[37] She testified that Mr. Dixon returned home from work later, and later that day the police came back and arrested Mr. Dixon. She also testified, like Mr. Dixon, of what could be characterized as very aggressive and rough treatment by the police of Mr. Dixon.

[38] In assessing Ms. Richardson’s evidence, I reminded myself that she is Mr. Dixon’s common-law spouse. Further, noting that she sat in court and listened to the evidence of Commissionaire Perron, although there was an

order excluding evidence. She stated that she hadn't been expecting to give evidence and, therefore, was not leaving The Court but that changed when she heard Commissionaire Perron's evidence alleging the second threat made during the telephone call, the second alleged threat made during the telephone call between Commissionaire Perron and Mr. Dixon, which she said she overheard.

[39] Further, it must be noted that Ms. Richardson, given the evidence before The Court, chose to reside with Mr. Dixon and continued to reside with him after the Family Court ruling where it would appear that her decision to continue to live with Mr. Dixon meant that her children could no longer continue to live with her. Further, Ms. Richardson, in my view, has an interest in the outcome of this case in that if Mr. Dixon is found guilty it may further interfere with the family unit being re-united even if the Family Court decision, which relied upon the evidence of Ms. Whitman, is re-visited.

[40] I felt, generally, that Ms. Richardson, as had Mr. Dixon, minimized the circumstances, the emotional upset of Mr. Dixon, particularly during the phone call. Indeed, during the phone call, even Mr. Dixon acknowledged that he was upset again by the call, describing it as a further slap in the face, and he acknowledged that he hung up on the Commissionaire. It was my

view that Ms. Richardson was generally trying to give evidence in a manner most favourable to Mr. Dixon.

THE CROWN EVIDENCE

[41] The key crown witness, clearly, was Commissionaire Perron.

[42] Commissionaire Perron was working at the third floor reception desk of the head office of Department on March 4, 2008. He testified that the third floor reception area is freely open to the public by elevators or stairs. Access to the offices beyond is restricted.

[43] Deliveries for Department of Community Services are brought to that third floor location. The mail goes there. He said it's not at all unusual for people to go there asking to speak to the Minister of Community Services.

[44] According to Commissionaire Perron, Mr. Dixon approached the reception desk at around 11:20 on the morning of March 4, 2008. Commissionaire Perron had never met Mr. Dixon before that day. Mr. Dixon introduced himself and said that he wanted to speak to the Minister. Commissionaire Perron said that the minister at the time was Judy Streach. Mr. Dixon wanted to see her that day, according to Commissionaire Perron. He wasn't going anywhere until he saw her. He was very forceful in demanding to

speak to the Minister. He was quite irate and verbally abusive toward the Minister. He was extremely angry. Commissionaire Perron testified that Mr. Dixon told him that a survey had been done that ruined his family life, that somebody should pay. If he had five minutes with the Minister, he would kill her. Commissionaire Perron's words varied somewhat with each time he referred to Mr. Dixon's statement regarding the minister and what he would do, but the essence of the statement was always to the effect that, if he had the opportunity, he would kill the Minister.

[45] In his notes made five or ten minutes after the full incident was completed, Commissionaire Perron recorded Mr. Dixon's statement as follows: "Give me five minutes, just five minutes with Minister Streach and I'll kill the Minister if I get the chance," those notes made contemporaneous to the event. Commissionaire Perron testified that he didn't know if Mr. Dixon was serious or just blowing off steam when he made that statement.

[46] Commissionaire Perron testified that he raised his hand in a STOP gesture, which can be seen on the video, and told Mr. Dixon to settle down or he would have to ask him to leave. He said Mr. Dixon did settle down.

[47] Commissionaire Perron got some information from Mr. Dixon and then called the eighth floor, which is the Minister's floor. He said he couldn't

reach anyone so, after Commissionaire Bauer returned to the reception desk, he, Commissionaire Perron, went to the eighth floor to see if someone would speak to Mr. Dixon. Before going upstairs he indicated he told Mr. Dixon what he was going to do and he also indicated that he signaled to Commissionaire Bauer to keep an eye on Mr. Dixon, signaling by putting his fingers towards his eyes. He said that he did that because of the threat that Mr. Dixon had uttered.

[48] Upstairs, Commissionaire Perron said he spoke to Ms. Rhonda Judge-Parsons. He said that he mentioned the threat only to let her know, or whoever was going to speak to Mr. Dixon, of the state of mind of Mr. Dixon. The Department of Community Services database was checked by Ms. Judge-Parsons for Mr. Dixon. There was no file located. Ms. Judge-Parsons asked Commissionaire Perron to go back downstairs and get a little bit more information from Mr. Dixon. The Commissionaire said he went back to the third floor, asked Mr. Dixon to write his name, phone number and the reason for wanting to speak to the Minister on a paper and that someone would call him. He said Mr. Dixon provided the note but repeated that he wanted to speak to the Minister and wanted to be contacted within 24 hours. Commissionaire Perron took the paper up to the eighth floor. On

that second trip to the eighth floor, he said he spoke to the Minister's Assistant, who is Ms. Tabbiner. He advised her of the situation. Ms. Tabbiner advised him that she was going to call the RCMP, that their policy was, regardless of the nature of the threat, that the RCMP would be contacted. Commissionaire Perron returned to the third floor. When he returned, Mr. Dixon was no longer there.

[49] Sometime after returning to the third floor, Commissionaire Perron began typing out his notes of the occurrence. He also testified that he called his Corps of Commissionaires supervisor to advise him of the incident.

[50] A little time later, at the request of Ms. Judge-Parsons, he telephoned the number given by Mr. Dixon and left a message on the answering machine for Mr. Dixon to please call back. He testified that, a short time later, a man whose voice he believe he recognized as Mr. Dixon's, called back. He said that Mr. Dixon was quite upset, angry and again stated that, given the chance, he would kill the Minister. Commissionaire Perron explained that he was just a Commissionaire and not an employee of Department. He said Mr. Dixon calmed down and was courteous, that Mr. Dixon wanted to talk to the Minister, not the Commissionaire. Mr. Dixon apologized to the

Commissionaire for wasting his time. He said that was how the conversation ended, on a congenial note.

- [51] Commissionaire Perron, in summarizing his communications with Mr. Dixon on the day in question, said that when talking generally with Mr. Dixon, he was calm and polite but when talking about the Department of Community Services and the Minister he was quite upset and his anger rose.
- [52] Commissionaire Perron's notes of the telephone conversation, again made soon after the conversation, record that Mr. Dixon was verbally abusive towards the Minister but those notes do not indicate that Mr. Dixon made a threat to kill the Minister. In his statement to the police regarding that phone call, he did not indicate that Mr. Dixon uttered a threat against the Minister. His notes do, at one point, indicate: "Like a power switch he became as good as can be, no anger, no threats, nothing but polite behaviour."
- [53] On cross-examination, Commissionaire Perron indicated that on the morning of March 4, 2008, he was not tired. He was not impaired by alcohol or drug. Indeed, he said he does not consume alcohol. He was not on any medication, even medication for a cold or such. He does not have any problem with his hearing. He did not mishear or misconstrue the statement made by Mr. Dixon. Although French is his first language, he has no

problem understanding English. He indicated that he has been communicating in English since age seven.

[54] He said he did not call 911. He did not arrest Mr. Dixon for uttering the threat nor did he direct Mr. Dixon off the property. He said he wasn't sure if Mr. Dixon was serious or just blowing off steam. He did not stand back from Mr. Dixon as he did not feel threatened by him. He said he alerted his partner to keep an eye on Mr. Dixon but didn't tell him verbally or in writing of the threat that Mr. Dixon had uttered.

[55] In response to the suggestion that he asked Mr. Dixon how he found the place, Commissionaire Perron first hesitated and then asked for the question to be repeated. When it was repeated, he said he didn't recall asking that, or at any time saying anything like that and then he added: "That was not a concern." And from the transcript:

The third floor, sir, is public access. Anybody can come through it. They've had many people come looking for the Minister, the deputy, one of the finance persons, human resources. They'll drop resumes to us. The mail comes to us and we have to bring it to the mail room. So many people of many positions, or whatever they want, to come here through us.

[56] I found Commissionaire Perron's evidence throughout to be logical, reasonable and without any evidence of bias towards Mr. Dixon. Indeed,

parts of his evidence were helpful to Mr. Dixon. Commissionaire Perron gave explanations that, in my view, were reasonable, consistent with verifiable information, such that those matters depicted on the videotape. Commissionaire Perron's actions after the alleged threat are, in my view, entirely reasonable and consistent with his having heard a threat uttered. Any inconsistencies in his relating of the events, in my view, were understandable given the passage of time and did not raise any concern regarding his credibility or reliability. Indeed, I found him to be entirely credible and reliable as a witness.

[57] Commissionaire Bauer also gave evidence, testifying of coming on the scene after the threat is alleged to have been made. He said that Mr. Dixon spoke to Commissionaire Perron in an aggressive manner and appeared upset. He did not record this in his notes or statement to the police. He confirmed receiving a hand signal from Commissionaire Perron to keep an eye on Mr. Dixon before Commissionaire Perron went upstairs.

[58] He detailed his conversation with Mr. Dixon. Mr. Dixon told him of the discredited social worker and that she had wrecked his family. They talked about their backgrounds in the military. He said they had general conversation. He stated that Mr. Dixon appeared very focused, very

determined. No threat was made during his conversation with Mr. Dixon. When Commissionaire Perron returned and had Mr. Dixon write out his information, Commissionaire Perron told Mr. Dixon that he would be contacted. Mr. Dixon left the area.

[59] His evidence is clearly relevant in that there is no evidence of any threat having been uttered during that period of time. He confirms the hand gesture signaling concerns, consistent with Commissionaire Perron's evidence.

ASSESSMENT OF CREDIBILITY, FINDINGS OF FACTS AND CONCLUSIONS

[60] Mr. Dixon's evidence as to whether or not he was upset, loud or aggressive from the outset, or only after the Commissionaire asked how he found the place, was not consistent in its telling. His evidence that Commissionaire Perron asked him three times how he found the place is not credible given that this is an open, public government office, and there is no reason why Commissionaire Perron would have asked such a question. In my view, Mr. Dixon repeatedly attempted to minimize his actions and put himself in the best possible light.

[61] I find that he intended to, and did, create a scene at the Department of Community Services office to achieve his goal of getting to see the Minister. His evidence about why he didn't call the police after he was advised by his wife of their visit to the home later that day was not believable. His statement that, if they want to arrest him they'll be back, I view as an indication on the part of Mr. Dixon of consciousness of guilt, knowing that he had made a scene at the Department office and uttered a threat against the Minister.

[62] I found Commissionaire Perron's evidence reasonable, logical, consistent with proven facts and entirely credible. I accept his evidence that Mr. Dixon, while at the Department of Community Services office on March 4, 2008, uttered a statement that he would kill the Minister of Community Services if given the opportunity to do so. I reject Mr. Dixon's evidence to the contrary.

[63] While, on my view of the evidence, I think it is very likely that Mr. Dixon uttered a similar statement during his phone conversation with Commissionaire Perron later that day. When I take into consideration the evidence of Ms. Richardson and the lack of any confirming evidence in the notes of Commissionaire Perron or otherwise, I am left with a reasonable

doubt as to whether or not any threat was made during that telephone conversation.

[64] Does the statement uttered by Mr. Dixon to Commissionaire Perron at the Department of Community Services constitute a threat? The words to the effect: "If given five minutes, I'll kill the Minister if I have the chance," in my view, clearly the words "objectively viewed" can convey a threat. The law does not require that the maker of the statement intended to carry it out. The law does require that the person making the statement intend that it be taken seriously or intend that it intimidate.

[65] Commissionaire Perron stated that he was not sure if Mr. Dixon was serious or just blowing off steam. In that regard, I took him to be speaking to whether or not he would kill the Minister if given a chance. The evidence clearly leaves a doubt as to whether or not Mr. Dixon intended to harm the Minister if given the opportunity to do so.

[66] However, I find that the statement of Mr. Dixon, made in an angry, aggressive manner, was intended to intimidate Commissionaire Perron into doing what Mr. Dixon was demanding that he do. In that sense, the threat was intended to be taken seriously. In my view of the law, such a statement

in those circumstances constitutes a threat pursuant to section 264.1 of the *Criminal Code*.

[67] Mr. Dixon's threat was conditional: "if I get five minutes" or "the chance."

The law is clear on that point that a conditional threat still constitutes a threat. For those reasons, in my view, the statement which I find to have been uttered by Mr. Dixon to Commissionaire Perron on March 4, 2008, constitutes a threat under section 264.1 of the *Criminal Code*.

[68] The defense urged The Court, if The Court so found, to consider the *de minimis* principle, that the matter is so minor that it is not something that should be dealt with by the criminal justice system. Assuming that that principle still has application to the criminal law, I frankly doubt that it would ever be seen applicable to a circumstance where a statement was found to be a death threat as encompassed by section 264.1. And, furthermore, whereas in this case there is a threat made against a public official, in my view, there are public interest factors which would weigh heavily against the application of the *de minimis* principle. For those reasons, I do not find the defense *de minimis* argument persuasive in this case.

[69] For those reasons, I find that Mr. Dixon has been proven guilty of the allegation of uttering a threat against the Minister beyond any reasonable doubt.

Dated at Halifax, Nova Scotia, this ____ day of _____ 2009.

Judge Marc C. Chisholm