IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. MacIsaac, 2008 NSPC 77

Date: 20081209
Docket: 1914042
Registry: Bridgewater

Between:

R.

v.

Daniel Charles MacIsaac

Judge:	The Honourable Judge James H. Burrill
Heard:	December 9, 2008 in Liverpool, Nova Scotia
Written decision:	January 7, 2009
Charge:	287(2) MVA
Counsel:	Herman Felderhoff, Q.C., for the Crown Phil Star, Q.C., for the Defence

Orally, by the Court:

[1] I think clearly, the **Haley** case sets out the procedure that must be followed at this stage. The information here is clearly objectionable because it is multi-various. It charges two offences. It's not simply a question of it charging alternate means of committing the same offence, and the *Criminal Code* does require that while an information can contain more than one count, each count must identify a separate offence. And, of course, it's mentioned in the **Haley** case of course, as well.

[2] As I say it is objectionable because it is duplicitous. The information is an information that is capable of amendment, would have been capable of amendment. But, before the Court could consider an amendment, the prosecutor must elect which offence they wish to proceed with. Of course, none of that was done. There was no amendment sought, nor did the Crown make an election in respect of the matter. The Crown closed it's case, Defence elected to call no evidence, and I agree that once the Crown has closed it's case and the Defence has been called upon to elect to call evidence or not, then it would be rare for an amendment to be granted to cure a defect in the information. An information

might be amended to conform with evidence at any stage of the trial on, in particular circumstances.

[3] However, in my view, given the lack of election here by the Crown I am bound, in my view, by the case of the **Queen vs. Haley** which is a December 22, 1981 decision of the Nova Scotia Court of Appeal, Nova Scotia Supreme Court Appeal Division, as it then was, found at 50 N.S.R. (2nd) 181. The case in my view, of course, is binding and given how it's unfolded and the three options that are set out by Justice MacDonald in that case it indicates to me that as a result of what has taken place here and the nature of the charge, I must quash that information.

J. H. Burrill