PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Doncaster, 2013 NSPC 13

Date: February 22, 2013
Docket:2433854 and 2433855
Registry: Shubenacadie

Between:

Her Majesty the Queen

v.

Ralph Ivan Doncaster

Judge:	The Honourable Judge Jamie S. Campbell
Heard:	February 21, 2013, in Shubenacadie, Nova Scotia
Written decision:	February 22, 2013
Charge:	CC 430(4) and CC 177
Counsel:	Arthur Theuerkauf, for the Crown Ralph Doncaster, self represented

By the Court:

[1] Mr. Doncaster has been charged with offenses contrary to section 177 of the Criminal Code, loitering or prowling at night, and section 430(4) of the Criminal Code, mischief. The charges arise from an incident that took place on or about February 13, 2012 at the home of Jennifer Field, his estranged wife.

[2] At the commencement of the matter Mr. Doncaster agreed with Crown counsel that it would be appropriate to have evidence heard on the trial matters before dealing with the various motions. The practical concern was that witnesses have been subpoenaed to appear today and they should be heard today. Evidence and argument regarding the motions would be heard later, as time would permit.

[3] Mr. Doncaster has filed Charter Notices. The first was filed on December 27th, 2012. The second was filed on January 3rd 2013 and a third was filed on January 14th, 2013. These notices, briefs and supporting case law total slightly more than 280 pages. The notices and briefs pertain to Mr. Doncaster's argument that sections 177 and 430(4) of the Criminal Code violate the Charter right to the presumption of innocence.

[4] Those Charter applications, as well as the trial, were to be heard today, Thursday, February 21st, 2013.

[5] On Monday, February 18th, 2013, Mr. Doncaster filed a further Charter Notice with an attached brief and case law amounting to an additional 100 pages of material. That would be a fourth Charter Notice, or a third if one considers that one of the first three was intended as a replacement. That Charter Notice contends that his right to be tried within a reasonable time, guaranteed by section 11(b) of the Charter has been breached.

[6] That Charter Notice included the paragraph: "And further take notice that the date for the hearing of this Application shall be February 21st , 2013 at 9:30am, in the Provincial Court of Nova Scotia located at 5 Mill Village Rd. Shubenacadie." It was therefore Mr. Doncaster's stated intent to proceed with that application today, February 21st, 2013 having given the Crown and the court what would amount to two clear days of the application.

[7] I arrived in Shubenacadie this morning at 8:45 am for court at 9:30 am and was provided with yet another brief with attached case law that had been faxed to the court offices last night at 7:30 pm. When court started the Crown was not even aware that the application had been filed. The cases are not tabbed or organized and the materials look to be about 250 to 300 pages in length. This application is to have the charges quashed, because Mr. Doncaster alleged that his arrest was illegal and the charges were frivolous. He asserts that his Charter rights under section 7 and 9 of the Charter have been breached and that the Crown should be

ordered to pay damages of $10,000. Mr. Doncaster asks that his delay application be heard first because in his view this last application would be unnecessary if the delay application or the "Askov" application as he has styled it is granted.

Section 11(b) Application:

[8] The Nova Scotia Provincial Court Rules, which were implemented on January 1, 2013, provide that pre-trial applications, which include applications for a stay of proceedings under section 11(b) of the Charter, should be heard at least 60 days before the trial date, not on the date of trial. Given that the Rules came into effect less than 60 days before the trial date it would not have been possible for Mr. Doncaster to have complied with that requirement.

[9] The Rules also provide, in paragraph 3.1(1), that a notice of application must be served 7 days before the first appearance on the application. Mr. Doncaster's application is not timely. The purpose of that rule is to prevent litigation by ambush by permitting both parties an opportunity to respond with appropriate argument and materials and also to avoid the delays that arise from requests for adjournments.

[10] With regard to the application filed three days ago, on Monday, an application under section 11(b) alleging unreasonable delay should normally be accompanied by a transcript of the various appearances to permit the court to draw inferences regarding the cause for delay. A court has to consider whether the actions of either the Crown or the accused person gave rise to delays. There is very little by way of supporting material before me in this application. There is, for example, no transcript.

[11] As I have said many, many, many times in the course of the hearing of this matter today I must consider that Mr. Doncaster is a self-represented accused. He is not a lawyer. He has however been able to prepare and file legal briefs analyzing technical areas of law accompanied by researched case law and other supporting materials. The ability to create briefs and copy case law along with a claim to possess above average intelligence should not prejudice the position of a self-represented litigant by having him treated as "almost a lawyer". Despite his being a rather confident and accomplished self-represented accused, I was prepared to allow Mr. Doncaster considerable latitude in the course of the trial. I am prepared to allow him very considerable latitude within the scope of basic procedural fairness to both himself and the Crown.

[12] Mr. Doncaster notes in his brief that on June 14, 2012 he requested the earliest possible trial date. There is no transcript of that appearance but I will assume that Mr. Doncaster's recollection is accurate. It would appear from the

endorsements on the informations that the trial date was set at that time. He also states that on October 14, 2012 he wrote to the court requesting earlier dates. In that letter he referenced his concern with regard to unreasonable delay. Mr. Doncaster was aware of this trial date approximately 8 months ago and yet waited until 3 days before the trial to make the claim that his Charter right to a trial within a reasonable time had been breached.

[13] One might wonder why a person who has already filed three briefs, (or two of course if you count an original and a replacement as one), would wait until the week of the trial to assert a claim of unreasonable delay. He clearly knew about the delay. His letter of October 14, 2012 suggests that he was aware of the legal implications of any delay and cited relevant Supreme Court of Canada case law. He also clearly knew how to file a Charter Notice. Even in the absence of specific court rules dealing with the timeliness of pretrial motions, it would be reasonable to assume that a person would appreciate that the time for filing a motion of that kind would not be a few days before the actual trial, the lateness of which is the subject of the Charter breach allegation.

[14] A number of alternatives could reasonably be anticipated to arise from that last minute filing. First, his application could proceed, with minimal notice to the Crown and in the absence of the supporting material upon which the Crown might seek to rely. That would give him the tactical advantage of surprise, which is one of the very things that the rules are intended to prevent. Second, the Crown could

be granted an adjournment. That would result in the trial being delayed by Mr. Doncaster's failure to file his application in a timely manner. That is another thing the rules are intended to prevent. The delay in filing the delay application would then have delayed the eventual resolution of the matter. The rules would be used to defeat their own purpose. Third, his application could simply be dismissed as untimely. That is very likely the result that the rules would contemplate in this kind of situation. You can't file 280 pages of materials about one kind of Charter breach then, at the last minute, throw another one on the pile when the facts supporting that allegation were known 8 months before. Even without the rules there is a requirement that the Crown be given adequate notice of a Charter application. This would not be adequate or reasonable notice.

[15] While that result is the one that is likely mandated by the rules, and it would seem by the procedures in place before those rules came into effect, the appropriate course of action in this case is to consider Mr. Doncaster's application. That is admittedly an extraordinary result. Mr. Theuerkauf for the Crown was prepared to argue the matter on short notice and did not object to Mr. Doncaster's untimely filing of this application. Given the nature of Mr. Doncaster's application, the prejudice to the Crown could be mitigated. Any other course of action would have the unfortunate result of allowing this matter to be prolonged. Despite his facility with legal processes and legal language, Mr. Doncaster is being treated in this matter with a degree of deference that would otherwise be accorded to the most naïve of self-represented litigants. His application will be considered.

[16] It will however be considered based strictly on the material that he has filed. As I have noted, the application is not accompanied by a court transcript. There is no evidence before me of any delay directly caused by the actions of the Crown. Mr. Doncaster does not assert that Crown counsel did anything whatsoever to cause the matter to be heard later than would otherwise be the case. There is no assertion on the part of the Crown that Mr. Doncaster waived the right to a trial within a reasonable period of time or that he gave up the opportunity to obtain earlier trial dates.

[17] The assertion is of institutional delay. Mr. Doncaster claims in his brief that three months should be the "outside limit" within which a summary matter should be brought to trial.

[18] Mr. Doncaster has argued that he has suffered prejudice by the delay. He lives below the poverty line and has paid $2,200 in bail. He says that in the past he has hunted rabbits, partridge and deer with his father. The firearms restriction has prohibited him from hunting. He noted in his evidence on the application that he has also not been able to hold the gun recently purchased for his step son. In this case a degree of prejudice can be assumed.

[19] He was however not incarcerated while awaiting trial. There is no evidence that his liberty has been restricted by house arrest of curfew conditions. There is no evidence to indicate that his ability to defend himself against the charges has been compromised in any specific way, such as evidence that has been lost or witnesses who have died. Prejudice of some kind however can be presumed.

[20] The matter involves a balancing in interests. Those interests include the accused person's interest in having a trial within a reasonable period of time and the interests of the administration of justice in bringing the merits of the matter before the court. That requires a consideration of the length of delay, the inherent time requirements of the case, the cause of any delay and the prejudice to the accused.

[21] Before considering the reasonableness of the delay a court must first consider whether there was delay of the kind that would merit examination. In this case, the time from charge to plea, of about 4 months is not at all remarkable. The time from plea to trial of 8 months was within the guidelines of 8 to 10 months set by the Supreme Court of Canada for institutional delay in provincial courts. The "delay" such as it was in this case, would not normally merit an inquiry as to reasonableness.

[22] If that delay did indeed merit examination of its reasonableness it would be necessary to consider the cause of that delay. The delay such as it was here, is

asserted to have been institutional. Mr. Doncaster also asserted that some delay prior to plea was attributable to the Crown because there had been negotiations regarding a potential plea. I cautioned Mr. Doncaster that he should exercise care to make sure that he did not prejudice his case by indicating what took place in those negotiations. The Crown did not seek any adjournments of the trial and did not in any way delay the matter in its normal course. Mr. Doncaster appeared with counsel and requested adjournments to enter a plea on April 19, April 26 and April 30, 2012. The plea was entered on June 14, 2012 and the endorsement notes that Judge Gabriel could not hear the trial.

[23] The trial was about 8 months from the date on which it was set. The date was based on the scheduling requirements of the Shubenacadie Provincial Court docket. The delay, again such as it was, was not of a magnitude that would jeopardize the right to a fair trial. There is no evidence of how a fair trial might have been compromised by an 8 month time from setting trial date to actual trial date.

[24] The time from charge to setting of the trial date and from that date to the trial itself, does not reach the threshold that would justify a consideration of the causes of the delay. If it did, I am satisfied here that the institutional delay, such as it was, was not so significant that in the absence of any other factors the trial should not proceed to be heard on its merits.

[25] The Charter application for a stay filed three days ago, on 18 February, 2013 is dismissed.

“Quashing” motion:

[26] Mr. Doncaster’s application to have the charges “quashed” was faxed to the court last night. To the extent that it is seeking a remedy under the Charter is not only untimely but absurdly so.

[27] One argument that Mr. Doncaster puts forward in the flurry of faxed papers are that the charges themselves are frivolous. He also argues that he was “over charged”. While Mr. Doncaster has put these forward in the form of a pretrial application they are arguments of a nature that would be properly put before the court in the context of the trial by way of argument. I will consider them in that light when considering the case on its merits.

[28] He has also made argument that his arrest was unlawful under s. 495(1) of the Criminal Code. The Crown was given absolutely no notice whatsoever of that assertion. His claim is also that sections 7 and 9 of the Charter were breached. Once again, the Crown was given no notice at all of that claim. Mr. Doncaster as a self-represented accused has been afforded every reasonable liberty with the rules and procedures. Allowing this claim to be heard on the day of trial based on claims

raised in an after-hours fax bomb would go beyond accommodating his needs as a self-represented party and would amount to permitting him full rein to run roughshod over any sense of fairness in the process.

[29] Mr. Theuerkauf objected to hearing that application. Mr. Doncaster initially suggested that an adjournment would be the appropriate remedy. I asked how this would fit with his expressed concern that the matter be resolved more expeditiously. He withdrew that application. Had he not, it would have been dismissed.

Section 11(d) Application:

[30] Mr. Doncaster's other Charter applications were made in a timely way. They relate to the wording of the Criminal Code sections under which he has been charged.

[31] Section 177 contains the phrase, "without lawful excuse, the proof of which lies on him". Section 429(2) provides that no person can be convicted of an offence under section 430(4) where he proves that he has acted with legal justification or excuse and with colour of right. Mr. Doncaster asserts that phrases "proof of which lies on him" and "he proves that" in each of the sections violates the presumption of innocence guaranteed by section 11(d) of the Charter.

[32] My colleague Judge Prince has dealt with the issue, as raised by Mr. Doncaster in the context of similar wording contained in s. 145(3) of the Criminal Code. In a decision dated 22 January 2013, in R. v. Doncaster, involving the same Mr. Doncaster, Judge Prince stated:

> "The Crown submits that, in the present case, after the evidence is called, if the court is left with a reasonable doubt whether the accused has a lawful excuse (presuming all elements of the offence had already been established), the court must acquit. Such a doubt may be found on the basis of any of the admissible evidence before the court, whatever the source. However, in order to be capable of raising a reasonable doubt, such a defence would have to have an air of reality".

[33] The phrases "he proves that" and "proof of which lies on him" are not interpreted as reversing the onus of proof in these matters. That interpretation was confirmed by the Supreme Court of Canada in R. v. Laba [1994] SCJ No. 106.

[34] The accused person need only raise a reasonable doubt as to his guilt which may be founded on any evidence including his assertion of lawful excuse. If he has a legal excuse, in order to rely on it, he must raise it. The Crown is not obliged, in presenting its case, to disprove in advance, the almost infinite variety of legal excuses, legal justifications or potential claims of colour of right that an accused person might in theory raise before he has even raised them. Once he has raised such a defence, the issue is whether a reasonable doubt as to his guilt has

been raised. The onus remains at all times of the Crown to prove the case against the accused person beyond a reasonable doubt.

[35] Mr. Doncaster's *Charter* applications with respect to both sections are denied.

The trial:

[36] This matter arises in the context of what appears to have been a bitter divorce proceeding. Mr. Doncaster concedes that on the night of February 12 and 13 2012 he did indeed go to the home of his estranged wife, Jennifer Field. He had not been invited there. While he had visited there, he had never lived in that house. His assertion that by being involved in the negotiation of the mortgage he somehow has the right to be on the property is simply wrong.

[37] Not only had he not been invited. This late night arrival on the property was two weeks after divorce papers had been filed. Ms. Field had already made a peace bond application. It is unreasonable to infer that at that time she wanted him around the house or that he somehow had a standing invitation to be there.

[38] Furthermore, the manner of his arrival was certainly not that of a casual visitor or invited guest. He arrived late at night. He called and there was no answer from Ms. Field. The lights were off. It was after midnight. He approached the home and knocked at the door. There was no answer. That would pretty much be the end of the matter one would think. Mr. Doncaster persisted. He pounded on the windows and went to the back of the house. He behaved in a way that would strongly suggest that he was insistent about gaining access.

[39] I am not satisfied that his actions constituted loitering at night. His actions were not loitering in the sense of purposeless wandering about the property. Nor were his actions prowling in the sense that that term suggests an element of surreptitiousness. Mr. Doncaster's actions were loud and persistently purposeful. The Crown has not proven the charge under section 177. I find him not guilty of that charge.

[40] Mr. Doncaster is also charged with mischief. He asserts that his actions do not constitute mischief either. He says that his actions were in and of themselves legal and that if this amounts to mischief the act of perfectly innocently knocking on the door of a person who is then annoyed by it would constitute mischief.

[41] As Mr. Doncaster himself has pointed out this afternoon, much depends on context. His door knocking was on the door of his estranged wife. Not only had divorce proceedings been commenced a few weeks before but things seem to have

taken on a particularly rancorous tone. His actions weren't limited to persistent knocking at the door, as in the example he gave of people involved in a car accident requiring immediate aid. He called first and there was no answer. Either she wasn't home, in which case going to the house made no sense at all, or she was home and was, for some reason not answering her phone. In the context of a nasty divorce, it should be no surprise that a person, a woman, may not take his call after midnight.

[42] Mr. Doncaster says that an act does not become mischief by being annoying or amounting to a nuisance. Having her estranged husband pounding at the home where the two of them had never lived together, in the dark, late at night, is not, once again to quote Mr. Doncaster, "a bit of a nuisance". It isn't just annoying. It is frightening. It very much disrupts the quiet enjoyment of a woman's property. It constitutes mischief.

[43] Mr. Doncaster asserts that he did not have the required mens rea. He said that he had no intent to commit mischief. He had the intent to bang on her doors and windows after midnight while they were going through a divorce, after she failed to answer the phone. People are presumed to intend the natural consequences of their actions.

[44] Mr. Doncaster has raised the issue of legal justification and colour of right. Once again, he need not prove the defences but need only raise a reasonable doubt.

The onus remains at all times on the Crown. Mr. Doncaster says that he had an honest belief that his life was in danger when his brother in law threatened to have him killed. He says that he honestly believed that he had the right to go to the property to have Ms. Field intervene in some way and that he was legally justified in acting as he did.

[45] The reasonableness of his belief is not the issue. It is whether it amounts to an honest belief in a state of facts or in civil law. Mr. Doncaster did not have an honest belief that he had a right to be there in those circumstances. He simply acted without turning his mind to it. The belief that he had a right to be at a home where he had never lived, while engaged in divorce proceedings with his wife, because he had amongst other things helped to negotiate the mortgage is quite simply not capable of being believed. He does not have to prove that honest belief. His assertion of that belief, in all of these circumstances is not sufficient to raise a reasonable doubt.

[46] He also claims that the death threat was such that he believed it was right for him to go there. He admitted in his evidence that in retrospect it was “a little irrational”. There was no evidence given as to the specific nature of the death threat or of its immediacy. Going at night to his wife’s home and knocking on the doors and windows after getting no answer to a phone call, seems to be in no way responsive to the issue of the threat. It is irrational in that it doesn’t make any sense at all. I cannot accept that the two would be connected. A lawful excuse or

colour of right based on an honest belief is based on an honest belief and not an ex post facto reasoning. Legal justification and colour of right amount to more than merely being able to morally justify one's actions to oneself, after the fact. Mr. Doncaster has not raised a reasonable doubt with the assertion that he believed his life was in danger.

[47] I find him guilty of mischief under section 430(4) of the Criminal Code.

[48] Note: The reasons set out above are the reasons given at the trial of the matter earlier. They have been corrected to add references for the purpose of clarity but have not been changed in any substantive way. The sections that follow have been prepared immediately following the trial.

Sentencing:

[49] Upon the conclusion of the trial at about 4:30 this afternoon Mr. Doncaster was sentenced. He was asked whether he wished to have the benefit of a presentence report. He replied that he did not. Mr. Theuerkauf recommended a period of probation for one year. The only terms were for Mr. Doncaster to remain away from Ms. Field's home and to have no contact with her except through a lawyer or in the context of child access under an order of a court of competent

jurisdiction. I understand that at this time there are no such provisions for access in place.

[50] Mr. Doncaster argued for a conditional discharge. He said that while he had one dated assault charge on his record from Ontario he was in the process of appealing that. He said that he had entered the plea in that matter because his then spouse wanted him to take responsibility for something he had not done. In order to remain with her he had entered the plea.

[51] The presence of an existing charge is, in any event, not a bar to a person receiving a conditional discharge.

[52] Mr. Doncaster asserted that if that appeal is successful the conviction in this matter would prevent him from travelling. He could not say that at any time the Ontario conviction had impeded his ability to travel. He could not point to a particular job or contract that would be placed in jeopardy by his having a criminal record. He could not point to any specific job requirement that he travel. His "need" for a conditional discharge is no greater than that of most other people.

[53] The public interest must also be considered. I indicated to Mr. Doncaster that while this offence was not one that would attract the provisions of section 718.2 as an aggravating factor because his wife had not been "abused", I would

consider that this offence arose in the context of a divorce and involved his estranged spouse. It is distinguishable from mischief in the form of low end mindless property damage. This mischief sent a message to a person who was at that time vulnerable.

[54] After applying the test in R. v. Fallofield (1973),13 C.C.C. (2d) 450 (B.C.C.A.), I concluded that it was not appropriate to grant a conditional discharge.

[55] In the course of sentencing Mr. Doncaster also argued that he should not be subject to the statutory term contained in probation orders to “keep the peace and be of good behaviour.” He asserted that the term was vague and could be used to charge him criminally for having done acts that would otherwise be innocent, morally blameless or morally neutral.

[56] The probation order was issued containing the terms that I have noted.

Probation Order:

[57] When Mr. Doncaster was asked by the Clerk of the Court to sign the probation order he refused. The order of course became effective upon being

issued and not upon his signing it. In any event, court was recalled with Mr. Theuerkauf once again present for the Crown. Mr. Doncaster politely said that he could not sign a document in which he was stating that he "understood" the terms of the probation order because no one could explain to him the extent of his jeopardy under the condition to keep the peace and be of good behaviour.

[58] I should add that at no point in the process was Mr. Doncaster impolite or even visibly upset. He stated his reasons for refusal. He noted that in his view I was losing patience with him. I asked him why he believed that to be the case and he said that the tone of my voice had become raised. It should be noted that a transcript of a proceeding does not reflect the speaker's tone of voice or volume. Things can be said that are either sarcastic or hurtful as conveyed by the tone of voice alone. I was concerned that Mr. Doncaster had perceived or appeared to have perceived a lack of patience in my voice though not in my words.

[59] I assured Mr. Doncaster that I was not upset, angry, frustrated or impatient. As a judge I do not have the luxury of impatience. I apologized to him if my tone of voice had left an impression that I had not intended. I recognize that he suffers from a condition that impairs his ability to read social cues and to respond to some social situations. Inadvertence on the part of a speaker may lead him to interpret things that are not intended.

[60] Mr. Theuerkauf very properly and strongly objected to the court entering into a process with Mr. Doncaster that would involve ruling in advance on a series of specific acts and variations of those acts that might constitute a breach of the statutory term to keep the peace and be of good behaviour. One could interpret Mr. Doncaster's refusal to sign and request for clarification as the petulant reaction of one who did not get his way. I did not interpret it that way. I should explain why.

[61] At the beginning of the hearing this morning I was about to ask Mr. Doncaster as a self-represented accused whether there were circumstances personal to him that would require accommodation over and above the assistance normally granted by trial judges to people representing themselves in court. I had in mind such things as hearing or speech impairments, mobility issues, issues with eye sight, literacy limitations, or psychological conditions. Before being asked Mr. Doncaster very politely offered that he had been diagnosed with both ADD (Attention Deficit Disorder) and Asperger's Syndrome. Mr. Doncaster advised that the latter manifested itself in a number of ways that might be relevant in the courtroom context. He indicated that he lacked the respect that is otherwise shown to people in positions of authority such as judges. He indicated that to him, and to use his turn of phrase, a judge was no different from a janitor. I hasten to add that in most respects that is an entirely correct assessment and not one reached as a result of any kind of psychological impairment or difference. He said that he had difficulty not interrupting people. In some situations he could not read social cues and respond appropriately in some social circumstances. I should add once again, that through the course of this matter, Mr. Doncaster comported himself with

impeccable politeness and respect to the court, Crown counsel, witnesses and court staff.

[62] While engaged with Mr. Doncaster on the issue of the interpretation of the phrase, “keep the peace and be of good behaviour”, I told him that while I would not provide him with legal advice or an impromptu legal dissertation, because of his special circumstances I would endeavor at least to offer him some clarity. I could not go through a list of actions that would in every case result in a breach of that condition. His concern for example was whether rolling through a stop sign would constitute a breach. Would a parking ticket be a breach? I suggested to him that a breach of a provincial statue could result in a breach but perhaps not in all situations. I noted that it required the application of common sense to context.

[63] Then Mr. Doncaster seized on my reference to “common sense” and noted that that was exactly the problem. Mr. Doncaster said that as a person with Asperger’s he was capable of exercising common sense but that this was not always the case. He said that he functioned better when dealing with logic and clearly defined applicable rules and limitations. The uncertainty inherent in concepts such as common sense and reasonableness were a problem for him. While not devoid of common sense he has what might be described as a common sense deficit.

[64] While others may be restrained by common sense from acting in certain ways, such as going to the house of an estranged wife who has filed a peace bond application, late at night, going around to the back of the house and banging on the doors and windows to see what she could do about a perceived death threat from her brother, when the police have already been called, Mr. Doncaster thinks differently. If he is given specific rules he can follow them.

[65] In light of his condition I determined that it would be best if Mr. Doncaster be accommodated by providing him with information that might allow him to better comprehend the restrictions placed on him. He has filed briefs and cases totally over 500 pages. He has cited case law from memory, referred to the concept of stare decisis by name, distinguished cases on their facts, spoken about the concepts of mens rea and actus reus also by their Latin names, and applied legal and constitutional principles. He is able to research, read and on some level understand case law. Rather than providing him with a list of prohibited and permitted acts, I directed him to two decisions of the Newfoundland Court of Appeal cited in Martin's Annotated Criminal Code 2013. The cases are R. v. S.(S.) (1999), 138 C.C.C.(3d) 430 and R. v. R.(D.), (1999),138 (3d) 405. Those cases provided that a breach of the peace is a "violent disruption or disturbance of public tranquility, peace and order" and that failing to be of good behaviour is limited to non-compliance with federal, provincial or municipal statutes and regulations and obligations imposed by court orders specifically applicable to the accused. I explained to Mr. Doncaster that he should read those cases, cite them up on Can Lii to which he has access, and read the cases that refer to them to get a better

sense of the definition of the phrase. Mr. Doncaster was apparently satisfied with that explanation and signed the order.

[66] Based on his self-description of his condition he will at best obtain a superficial understanding of the phrase. Much like owning a hammer doesn't make you a carpenter, the ability to access case law and produce briefs that read on some level like legal briefs, is not indicative of an ability to understand the law. Mr. Doncaster's request for clarity and apparent inability to grapple with the degree of uncertainty necessarily inherent in some legal concepts such as reasonableness for example, provides some insight into his actions. Filing a notice of a Charter application based on delay three days before the trial and filing 300 pages with a claim for $10,000 the night before the trial, would suggest that in those instances the concept of reasonable behaviour had indeed eluded him.

[67] Shared experience and shared understanding of human behaviour on some elementary level constitutes common sense. The inability to grasp those concepts and to react appropriately when faced them, is a very unfortunate condition that seriously limits one's ability to understand the law in anything more than a superficial way. While Mr. Doncaster's situation is one that should properly be accommodated by providing him with direction of the kind I have endeavored to provide, the law simply cannot operate like some kind of algorithm, in the absence of common sense.

[68] As Justice Oliver Wendell Holmes famously wrote in his book, “The Common Law”,

> “The life of the law has not been logic; it has been experience. The law embodies the story of a nation’s development...it cannot be dealt with as if it contained the axioms and corollaries of a book of mathematics.”