

YOUTH COURT OF NOVA SCOTIA

Citation: *R. v. C.C.*, 2018 NSPC 49

Date: 20181119

Docket: 8224867 / 8224870

Registry: Sydney

Between:

Her Majesty the Queen

v.

C.C.

LIBRARY HEADING

Judge: The Honourable Judge Diane L. McGrath

Heard: November 19, 2018 in Sydney, Nova Scotia

Oral Decision: November 19, 2018

Written Decision: December 12, 2018

Subject: Sentencing, *Youth Criminal Justice Act*
Aggravated Assault

Summary: C.C. who was thirteen years old at the time of the offence pled guilty to aggravated assault. A s. 34 assessment highlighted a number of areas of concern in the young person's life and a s. 19 case conference was held prior to sentencing. The Court held that the principles of rehabilitation, reintegration and protection of the public were best served by the young person remaining in the community where he had established a supportive network for the first time in his life.

Issues: Sentencing: custodial vs non-custodial sentence for aggravated assault under the *Youth Criminal Justice Act*.

Result: Young Person sentenced to twenty-four months probation.

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Date: 20181119

Docket: 8224867 / 8224870

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Her Majesty the Queen

v.

C.C.

Judge: The Honourable Judge Diane L. McGrath

Heard: October 11, 2018, in Sydney, Nova Scotia

Oral Decision November 19, 2018

Written Decision: December 12, 2018

Charge: 268 of the Criminal Code of Canada

Counsel: Steve Drake for the Crown
Christa Thompson, for the Accused

By the Court:

Introduction

[1] On October 11, 2018 C.C. pled guilty to charges that he:

On or about May 12, 2018 at or near Sydney, Nova Scotia, did wound Brian MacDougall thereby committing an aggravated assault Contrary to Section 268 of the Criminal Code of Canada;

And furthermore did:

while subject to a youth sentence of probation made by the Youth Justice Court ordered on November 29th, 2017 willfully fail to abide by such sentence, to wit: abide by a curfew to be set by your probation officer in consultation with your parents (8:00 pm to 7:00 a.m.) contrary to Section 127 of the Youth Criminal Justice Act.

[2] In the early morning hours of May 12, 2018 C.C. who was, at the time, 13 years old, was alone in a taxi. He was on his way home from his brother's place where he was supposed to spend the night. During the drive C.C. suddenly and without provocation attacked the taxi driver with a beer bottle he had taken from his brother's fridge.

[3] The taxi driver was able to pull over to the side of the road and radio for help. Unfortunately, the driver was unable to get out of the car due to the suddenness and persistence of the attack. While C.C. was hitting and jabbing at the driver he kept yelling "get out". During the assault the driver sustained numerous

cuts to his face and neck and, as a result of trying to deflect the blows from C.C., cuts to his forearm and hand.

[4] There is nothing to suggest that C.C. attempted to or intended to rob the taxi driver nor is there anything to suggest the driver was targeted by C.C.

[5] Pursuant to s.34 of the *Youth Criminal Justice Act* this court ordered a psychological assessment of C.C. Following the completion of that report and in anticipation of a guilty plea, all parties agreed that a s.19 case conference would be beneficial. The s. 19 case conference was held on September 12, 2018.

Position of the Parties on Sentence

[6] On November 2, 2018, this court heard sentencing submissions from both parties.

[7] The Crown position is that given the seriousness of the offence, the level of violence, the vulnerability of the victim, because of his occupation and the many challenges ahead for the young person, protection of society must be paramount.

[8] The Crown maintains that specific deterrence, denunciation and protection of the public can best be achieved by rehabilitative efforts in a custodial setting. For those reasons the Crown has submitted that a nine month period of custody

followed by a fifteen month period of probation is appropriate in the circumstances.

[9] Counsel for C.C. has argued for an extended period of probation. Defence counsel argues that a lengthy probation order, properly crafted, can over time, promote the rehabilitation of C.C. which they submit is well underway. Defence counsel argues this is the best approach to give effect to the principles of the *Youth Criminal Justice Act* and ensure the long-term safety of the public.

[10] It is the Defence position that custody, in the unique circumstances of C.C., will not benefit his rehabilitation and reintegration into society, but rather will only serve to undo the progress he has made to date and ultimately have a negative effect on his rehabilitation.

[11] Both parties have provided the Court with cases they submit are not identical to C.C.'s situation, but nonetheless, provide assistance and guidance in arriving at a fit and appropriate sentence.

[12] I have read all the cases provided and find that although all are distinguishable, they all provide some guidance to this Court with respect to the task at hand. The general principles to be applied and the manner in which they are to be considered are examples of the assistance those cases have given this Court.

[13] While I do not intend to engage in a case by case analysis of each, as was provided by both counsel in their sentencing remarks, I have attached the citations to this decision as an appendix for the benefit of anyone who may wish to conduct their own review.

The Law

[14] At the time of this offence C.C. was 13 years old, he is now 14. As C.C. is a young person as defined in the *Youth Criminal Justice Act*, this Court is guided by the principles set out by Parliament in that Act. S. 3 of the *Youth Criminal Justice Act* states:

3 (1) The following principles apply in this Act:

(a) the youth criminal justice system is intended to protect the public by

(i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,

(ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and

(iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

(b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:

(i) rehabilitation and reintegration,

(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,

(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,

(iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and

(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

(i) reinforce respect for societal values,

(ii) encourage the repair of harm done to victims and the community,

(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1). 2012, c. 1, s. 168.

[15] When imposing a sentence on a young person Courts are guided by the Principles of Sentencing set out in s. 38 of the *Youth Criminal Justice Act* which states as follows:

Purpose

38 (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

(2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

(c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;

(e) subject to paragraph (c), the sentence must

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),

(ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and

(iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community; and

(f) subject to paragraph (c), the sentence may have the following objectives:

(i) to denounce unlawful conduct, and

(ii) to deter the young person from committing offences.

(3) In determining a youth sentence, the youth justice court shall take into account

- (a) the degree of participation by the young person in the commission of the offence;
- (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
- (c) any reparation made by the young person to the victim or the community;
- (d) the time spent in detention by the young person as a result of the offence;
- (e) the previous findings of guilt of the young person; and
- (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section. 2012, c. 1, s. 172.

Victim Impact Statement

[16] In considering the law and the application of the law to the particular circumstances of the young person this court cannot lose sight of the fact that there is a victim of this offence.

[17] That victim has a name, it is Brian MacDougall. Mr. MacDougall has chosen to file a victim impact statement in this matter. The victim impact statement provides this court with Mr. MacDougall's perspective on the offence and allows both the court and the young person to better understand the affect this offence has had on his life.

[18] As stated previously, Mr. MacDougall, was at the time of this offence, employed as a taxi driver. As the Crown rightly pointed out in their submissions,

taxi drivers are very vulnerable as a result of the nature of their employment. They work alone, at all hours of the day and night often driving people to remote areas.

[19] From Mr. MacDougall's victim impact statement, we see that this offence has had a serious and significant impact on his physical and mental health. He states that he is plagued by the memories of what happened to the point where he is unable to return to work. He is suffering from depression and anxiety. He continues to have pain, sensitivity and numbness in various areas of his hand and has scars on his hand and face. His recovery from this offence is ongoing and will be for quite some time.

Personal Circumstances of C.C.

[20] The s. 34 assessment and s. 19 case conference have provided this court with an abundance of information pertaining to the personal circumstances of C.C., both during his earlier years and at present.

[21] It is quite clear from the information available that C.C. himself is an incredibly vulnerable young man. He has had a very difficult life thus far. The system, as the courts, both criminal and family, and child welfare are often referred to, has failed him at every turn.

[22] C.C. comes from a large family. His parents, who clearly love him very much, have been largely unable and ill equipped to provide him with the nurturing and structured environment he clearly requires. They themselves have challenges and obstacles to deal with and overcome in their own lives.

[23] Child welfare seems to have been a sporadic yet ever present presence in C.C.'s life, however contradictory that may sound. There is a history of repeated referrals being made and investigated but not much information on what, if anything, ever resulted from those investigations.

[24] We do know that at a young age C.C. was the victim of sexual abuse at the hands of a family friend. His mother often left him in the care of this individual who abused that trust and took advantage of C.C. in the most despicable manner. C.C. was victimized by someone who was supposed to care for and protect him. It is no wonder he now has trust issues, particularly with respect to adult males, as highlighted in the information this court has received.

[25] As part of the assessment process, a psycho-educational assessment was performed. This assessment was and is incredibly useful in identifying some of the challenges C.C. faces in an educational setting as a result of some cognitive deficits and learning disabilities.

[26] It is important to keep in mind when reading the assessment, as it pertains to the offences in question, that the cognitive deficits had not yet been identified when any discussion about the index offence occurred. As well, those discussions occurred prior to C.C. entering his plea to the offences. As a result, what may appear to be reluctance to engage in a discussion about the offences or an attempt to deflect or minimize his behaviour must be placed in context of the assessment results as a whole and interpreted with the aid of the comments from the s. 19 case conference.

[27] The s. 34 assessment highlights a number of serious concerns that must be addressed if the goals of the *Youth Criminal Justice Act* of rehabilitation, reintegration and long-term protection of the public are to be adequately addressed. It is clear C.C. requires a great deal of supervision, counselling and therapeutic interventions, as well as medication and education.

[28] In addition to the s. 34 assessment, as mentioned earlier, a s. 19 case conference was held to assist and inform the court with respect to the options available for C.C., both in the community and a custodial setting.

[29] The s. 19 case conference was attended by representatives from the IWK, including one of the Clinical and Forensic Psychiatrists who authored the s. 34

report and C.C.'s current Clinical Social Worker; Probation Services; representatives of the Cape Breton-Victoria Regional Centre for Education and C.C.'s current school; Department of Community Services Child Welfare; C.C.'s mother, father and grandmother; C.C.'s counsel and Crown Counsel.

[30] During the s. 19 conference it became clear that all the agencies represented were committed to working together with C.C. and his family to attempt to ensure the best possible outcome for C.C.

[31] Health Care Providers, Department of Community Services, school officials and probation all, without exception and without hesitation, indicated their support for and commitment to working together to help this young person. Concrete suggestions on how to move forward and what was required to ensure long term success were put forward for the consideration of this court.

Consideration of available options

[32] Sentencing options under the *Youth Criminal Justice Act* are set out in s. 42 of the Act. Preconditions for a custodial sentence are dealt with in s. 39.

[33] As we work our way through those sections it is clear that the gateway to a custodial disposition presented in s. 39 is open. Aggravated assault is clearly a violent offence.

[34] It is equally clear that the option of deferred custody is not available.

[35] Section 42(5)(a) states:

(5) The court may make a deferred custody and supervision order under paragraph (2)(p) if
(a) the young person is found guilty of an offence other than one in the commission of which a young person causes or attempts to cause serious bodily harm;

[36] With the removal of the deferred custody option this court is left with the options of actual custody as put forward by the Crown, or probation as advocated for by Defence.

[37] The Crown's position is that by removing the option of deferred custody for offences such as aggravated assault, Parliament's intention is that young persons who commit offences involving the infliction of serious bodily harm should receive actual custodial sentences and, therefore, probation is not appropriate.

[38] While I agree that generally that will be the case, it does not follow automatically. Parliament has not closed the door for consideration of non-custodial sentences in the form of probation for these types of offences. However, before a non-custodial sentence is imposed the sentencing judge must first

seriously consider the imposition of a custodial sentence and if rejected, provide reasons. (See *R. v D.(C.) R. v. K. (P.K.)*(2006), 206 C.C.C. (3d) 222 (Alta. C.A.); *R. v. S.(K.)*, 2009 NLCA 46)

[39] In considering the sentencing options available I am mindful of sections 3, 38, 39, and 42 of the *Youth Criminal Justice Act*, as well as the Preamble to the *Act*.

[40] As discussed by the Newfoundland and Labrador Supreme Court – Court of Appeal in *R. v. S.(K.)* the *Youth Criminal Justice Act* does not provide guidance to courts when it comes to reconciling principles that may appear to conflict in any given case to achieve the long-term protection of the public. However, the Supreme Court of Canada has provided that direction in *R. v. P.(B.W.)*, 2006 SC.C. 27. At paragraph 31 of that decision, Charron J for the court stated:

...the means of promoting the long-term protection of the public describe an individualized process by focusing on underlying causes, rehabilitation, reintegration and meaningful consequences *for the offender*. [emphasis by Charron J.]

[41] C.C. was 13 years old when this offence was committed. He has since turned 14. His home life in May 2018 is best described as unstable. When his parents separated he stayed with his father as the other children were going with his

mother and he felt sorry for his father. He appears to have been living between the homes of his father and his mother.

[42] During this time C.C.'s father had his own difficulties with the courts and his mother appears to have been attempting to cope as best she could.

[43] It is significant as well that around the time this offence occurred C.C.'s abuser was before the courts with respect to the offences committed against him. His life at this time was characterized by instability and turmoil.

[44] When we add to this mix, C.C.'s cognitive deficits and mental health issues as identified in the s.34 report we have a recipe for disaster.

[45] On May 12, 2018 C.C. was a ticking time bomb. This time bomb, however, was not without its warning signals. There were plenty of signs available that went unheeded. C.C. was crying out for help, but no one was listening. Just days before this offence he was assessed by mental health professionals for suicidal ideations. Unfortunately, timely intervention did not occur.

[46] We may never know what was going through C.C.'s mind when he attacked the defenseless taxi driver Mr. MacDougall on May 12, 2018, but it is clear when the totality of the circumstances are known, including the timing of the offence in relation to his abuser being before the courts, his fear of being alone with unknown

males as highlighted in the information before this court and the words he uttered during the assault on Mr. MacDougall “get out, get out” , there was something more at play than simply a random, gratuitous act of violence.

[47] There is nothing to suggest that Mr. MacDougall did anything to provoke or bring about the violence to which he was subjected. Likewise, there is nothing to suggest that Mr. MacDougall was targeted by C.C. or that C.C. was attempting to rob Mr. MacDougall. For some unknown reason C.C. seems to have simply snapped.

[48] After his arrest C.C. was released into the care of his grandmother who resides in a neighboring community. He has remained with her until today. With his grandmother C.C. has found a stable home environment with rules, expectations and consequences. His mother and siblings have relocated and now reside in the same building as C.C., providing him with regular family contact and positive family interactions. The family is working with Department of Community Services Child Welfare to facilitate ongoing contact between C.C. and his father.

[49] Prior to residing with his grandmother C.C. was isolated socially with few, if any, friends. He was exhibiting behavioural problems at school and in the

community. He was suffering from depression, low self esteem and anger issues. He had no hobbies or pro-social activities and was easily frustrated.

[50] I recall very well the first day C.C. appeared in my court room following the commission of these offences. That was on May 14, 2018. What I recall most was how young, scared and vulnerable C.C. appeared. A presentation that is in stark contrast to the young man before me today. While C.C. is understandably apprehensive about what the outcome of today's proceeding will be, his physical appearance and presentation is markedly improved. He appears more confident and at ease with himself and his surroundings. He looks healthy and well cared for.

[51] The question of a just and appropriate sentence in this matter is not an easy one. Nothing this court does here today will restore Mr. MacDougall to his pre-offence self. We can only hope that with time, the support of his family and friends and the appropriate health care interventions that task can be accomplished.

[52] With respect to C.C. however, we do have an opportunity to make a difference, an opportunity to put in place a sentence that will rehabilitate and reintegrate him into society. A sentence that will address the risk factors identified in the s.34 assessment, thereby providing C.C. with the best possible chance at a

productive and prosocial future. It is through accomplishing these objectives that the Court can best provide long-term protection for the public.

[53] In determining what that sentence should be I am guided very strongly by the opinions and views provided during the s. 19 case conference.

[54] The opinions and views of mental health professionals, educational professionals, child welfare professionals, justice system professionals and family members were all voiced and heard. While the services that would be available during a custodial sentence were reviewed during the conference, the overwhelming view that emerged was that a custodial disposition would do nothing to further the aim or purpose of the *Youth Criminal Justice Act* in the unique circumstances of C.C. Rather, it became apparent that a custodial disposition in this situation could likely have the opposite effect on C.C.

[55] C.C. has been working very hard throughout the past seven months. He is attending a new school, he is conducting himself appropriately in class and in social situations. He is beginning to make friends and become accepted by his peers. He has come to trust his clinical social worker and is beginning to make progress with her in their regular sessions. It is important to note that this

relationship has taken time and hard work on the part of both C.C. and his social worker to develop.

[56] As well, C.C. is in a stable home environment for the first time. He is receiving his required medication regularly for the first time and is subject to rules and consequences for his actions.

[57] It is noteworthy that C.C. has been on very strict conditions during the past seven months. He has been on house arrest with very few exceptions. He has abided by his conditions without exception, something that has amazed even his own counsel. I note this to highlight that C.C. is clearly capable of following court orders and understands the importance of doing so.

[58] While the sentence of this court must, in addition to all the other factors mentioned previously, impose meaningful consequences for the actions of the young person there is ample authority in case law to support the proposition that a properly crafted probation order can be very meaningful.

[59] After carefully considering the circumstances of this offence and this young person, in particular the issues and risks identified in the s.34 report together with the comments and discussions from the s.19 case conference, I am satisfied that a

custodial sentence in this matter would not satisfy the principles of the *Youth Criminal Justice Act*.

[60] To commit C.C. to custody at this point would be to undo all that has been accomplished in the past seven months, the relationships and the trust that have been built would all be for naught. C.C. would be back at square one attempting to build new relationships with strangers.

[61] We know from the assessment that trust is an issue for C.C. and consequently these relationships are difficult to form. Even if, and it's a big if, the relationships he currently has were able to be replicated in custody he would only be there for a relatively short time and then be returned to the community where the process would begin again for the third time.

[62] Given the background of this young man as presented in the documentation before this court, it is clear that the long term-protection of society and the principles and aims of the *Youth Criminal Justice Act* are best served by having him remain in the community where his supports and the proper interventions are available to him.

[63] This Court recognizes that this is an unusual step, but this is an unusual set of circumstances. The appropriate sentence is in this situation based on all the available information is a lengthy period of probation.

[64] The longest term available is two years and I find that in these circumstances and the work yet to be done, that two years is appropriate. It is also appropriate that throughout this term there be regular check ins with the Court with respect to C.C.'s progress to add to the element of accountability as proposed by Defence Counsel. I find that this is permitted by section 42 (2) of the *Youth Criminal Justice Act* which states:

2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and...

(s) impose on the young person any other reasonable and ancillary conditions that the court considers advisable and in the best interests of the young person and the public.

[65] The conditions will be stringent but not so stringent as to turn the probation order into a deferred custody order and thereby do through the backdoor what we could not do through the front.

[66] I am also ordering that a copy of the s.34 Assessment Report be released to the Provincial Director pursuant to s. 34(7)(b)(ii). It is the finding of this Court, based on the totality of the evidence, that with holding that report would frustrate

the rehabilitation and reintegration of C.C. thus jeopardizing his long-term safety as well as the long-term safety of the public.

[67] In addition, the Crown's request for ancillary orders will be granted as appropriate in all of the circumstances. There has been no argument against either order advanced by Defence.

[68] In granting the s. 51(1) Firearms Prohibition, I am taking into consideration the fact that in committing the s. 268 offence C.C. used what was at hand as a weapon. As well, the information before the Court tells us there is work yet to be done with C.C. in terms of mood regulation and anger management. In light of all those factors it is the finding of this Court that the protection of the public, as well as the best interests of the young person, will best be served if he is subject to such a prohibition for a period of two years. For the next two years C.C. you will be prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

[69] I will also grant the request for the DNA Order as s.268 is a Primary Designated Offence. The DNA legislation applies explicitly to the *Youth Criminal Justice Act* as well as the *Criminal Code*.

Diane. L. McGrath, JPC

APPENDIX “A”

R. v. T(J) [2011] S.J. NO. 52, 267 C.C.C. (3D) 143, 366 Sask. R. 154, 506 W.A.C. 154, 92 W.C.B. (2d) 822

R. v. B. (C.C.) 2010 CarswellSask 866, 2010 SKPC 181, [2010] S.J. No. 792, 92 W.C.B. (2D) 833

R. v. K.(P.K.) 2006 CarswellAlta 1, 2006 ABCA 1, [2006] A.W.L.D. 815, [2006] A.W.L.D. 817, [2006] a.w.l.d. 818, [2006] A.J. No. 1, 206 C.C.C. (3d) 222, 360 W.A.C. 74, 376 A.R. 74, 69 W.C.B. (2d) 287

R. v. Charlette 2015 CarswellMan 163, 2015 MBCA 32, [2015] 9 W.W.R. 692, [2015] M.J. No 94, 121 W.C.B. (2d) 168, 319 Man. R. (2d) 4, 638 W.A.C. 4

R. v. L. (S.A.) 2003 CarswellBC 2576, 2003 BCCA 563, [2003] B.C.J. No. 2397, 15 C.R. (6th) 298, 179 C.C.C. (3d) 97, 188 B.C.A.C. 88, 308 W.A.C. 88, 58 W.C.B. (2d) 614

R. v. S. (K) 2009 CarswellNfld 209, 2009 NLCA 46, [2009] N.J. No. 347, 290 Nfld. & P.I.I.R. 291, 84 W.C.B. (2d) 529, 896 A.P.R. 291

R. v L.(J.R.) 2007 CarswellNS 227, 2007 NSCA 62, [2007] N.S.J. No 214, 221 C.C.C. (3d) 278, 254 N.S.R. (2d) 344, 49 C.R. (6th) 1, 74 W.C.B. (2d) 212, 810 A.P.R. 344