

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Colley, 2007 NSPC 30

**Date:** June 12, 2007

**Docket:** 1706704-06

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Carlo Lenn Colley

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**LIBRARY HEADING**

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**Judge:** The Honourable Associate Chief Judge R. Brian Gibson,  
J.P.C.

**Heard:** May 14, 2007 in Dartmouth, NS

**Written Decision:** June 12, 2007

**Subject:** Charges contrary to S.268(1), S.267(a) and S.88 of the  
**Criminal Code.**

**Summary:** The defendant, immediately after being accused by the complainant of stealing lumber from the complainant's property and being directed by the complainant to remain off his property, went to and entered upon the complainant's property in a state of anger in the presence of the complainant to challenge the complainant's authority to issue such a direction. In response to the defendant entering upon his property, the complainant armed himself with a knife. The defendant, upon seeing the knife, grabbed a shovel, moved toward the complainant, struck him on the arm with the shovel and then punched the complainant in the area of his ribs while the complainant was on the ground. The complainant suffered a fractured ulna bone and a fractured rib.

**Issue:** The defendant claimed to have acted in self-defence. The issue was whether the complainant's actions were justifiable under S.41(1) of the **Criminal Code**, whether those actions, considered in the context of all the evidence were sufficient to support the claim of self-defence or whether they were the unjustifiable actions of a trespasser, and thereby an assault as contemplated by S.41(2) of the **Criminal Code**.

**Result:** The actions of the complainant were justifiable and in accordance with S.41(1) of the **Criminal Code**. The defendant, who was under no imminent danger, could reasonably have retreated upon seeing the knife, instead chose to arm himself with a shovel and struck the complainant. As such, his actions fell within the scope of S.41(2) of the **Criminal Code**.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISIONS MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***