

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Francis, 2007 NSSC 108

Date: 20070405

Docket: CRSK 270243

Registry: Kentville

Between:

Her Majesty The Queen

Plaintiff

v.

Dale Brian Francis

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: By written submissions & conference call

**Final Written
Submissions:** March 23, 2007

Subject: Relocating site for criminal jury trial

Issue: Whether homicide jury trial should be moved from courthouse with claimed inadequate facilities including lack of access by potential jurors with physical disabilities.

Summary: The accused applied to move trial venue per section 599 of Criminal Code from Windsor to Kentville (35 kilometers), within the same jury district because of inadequate facilities. The Crown opposed the application, primarily on the basis that its several subpoenaed civilian witnesses from Indian Brook were “unwilling” witnesses and would not likely attend willingly at the relocated trial location, thereby causing delay in the trial and prejudicing the Crown’s case. They submitted that the courthouse could accommodate the trial and that the Court

should order the administration to remedy any deficiencies before the trial date.

Result:

The application is not a change of venue application under s. 599; however, the Court applied the factors relevant to a s. 599 application and concluded:

(1) the Windsor facility was inaccessible to potential jurors with physical disabilities, applying the paradigm of access by personal wheelchair (per Via Rail);

(2) the location of the jury box and jury room created unnecessary and significant risk of inappropriate contact between the jury and other trial participants;

(3) while acknowledging the genuineness of the Crown's concern about "unwilling" civilian witnesses, relocation of the trial would have no significant impact on this problem;

(4) balancing the interest, the trial should be moved.

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