

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Stephen, 2008 NSSC 31

Date: 20080201

Docket: CR 182971

Registry: Halifax

Between:

Her Majesty the Queen

v.

Melanie Jane Stephen
(a.k.a. Melanie Jane Stephen - Patriquen)

Editorial Notice

Marvin Reginald Coates has received a pardon as of August 21, 2009.

Revised Decision: The text of the original decision released on February 1, 2008 has been corrected according to the erratum released Feb. 28, 2008.

Judge: The Honourable Justice Felix A. Cacchione

Heard: February 12,13,15, 19-23; March 5-8,19-21; April 4, 5, 10,11,17,18, 26; May 3, 4; June 5-8; October 29; November 28, 29; December 7, 2007, in Halifax, Nova Scotia

Counsel: Anne Marie Simmons, for the Crown
Ken Greer, for the Defendant

By the Court:

[1] Melanie Jane Stephen (Stephen) and her now estranged husband Michael Ronald Patriquen (Patriquen), were charged jointly:

1. THAT at or near Halifax, in the County of Halifax, Province of Nova Scotia, between the 1st day of January, 1995 and the 28th day of February 2000, they did unlawfully have their possession property or proceeds of property, of a value exceeding one thousand dollars, to wit: real property, located at 81 Orchard Drive, 87 Orchard Drive, 93 Orchard Drive, and 97 Orchard Drive, Middle Sackville, County of Halifax, Province of Nova Scotia, and money, **and chattels** knowing that all or part of the property or proceeds were obtained or derived directly or indirectly as a result of the commission in Canada of an offence contrary to section 4(1) of the *Narcotic Control Act* and after May 14, 1997, contrary to Part 1 of the *Controlled Drugs and Substances Act*, to wit: trafficking in a narcotic/controlled substance, to wit: cannabis (marihuana) and cannabis (resin), thereby committing an offence under section 19.1(2) of the *Narcotic Control Act* and section 8(2) of the *Controlled Drugs and Substances Act*;

2. AND FURTHERMORE THAT at or near Halifax, in the County of Halifax, Province of Nova Scotia, between the 30th day of March, 2000 and the 14th day of April 2000, they did transfer the possession of, dispose of or otherwise deal with property, to wit: real property located at 87 Orchard Drive, 93 Orchard Drive, and 97 Orchard Drive, Middle Sackville, County of Halifax, Province of Nova Scotia, with intent to conceal or convert that property knowing or believing that all or part of that property was obtained or derived directly or indirectly as a result of the commission in Canada of an offence contrary to Section 4(1) of the *Narcotic Control Act* and after May 14, 1997, contrary to Part I of the *Controlled Drugs and Substances Act*, to wit: trafficking in a narcotic/controlled substance to wit: cannabis (marihuana) and cannabis (resin), thereby committing an offence contrary to section 9(2) of the *Controlled Drugs and Substances Act*; **(words in bold added)**

[2] At the conclusion of its case the Crown applied, pursuant to s.601(2) of the *Criminal Code*, to amend the first count on the indictment to conform with the evidence presented and include the word chattels as one of the things possessed by the accused during the relevant period. The application to amend was granted.

[3] The defence advanced was that Stephen should be excused from criminal liability because during the relevant time frame she acted under compulsion by threats, s.17 *Criminal Code of Canada R.S.C. 1985, c.C-46*, and under duress. The

accused Stephen testified on her own behalf and called both lay and expert evidence to raise this defence.

[4] An initial determination of whether s.17 and duress have an “air of reality” must be made before proceeding to deal with the case on its merits.

[5] In order to decide if a defence should be considered the Court must first consider if the defence has an “air of reality”. In deciding whether the defence has an “air of reality” the Court is performing a gatekeeper function: *R. v. Savoury*, [2005] O.J. No. 3112 (Ont.C.A.).

[6] The objective of the “air of reality” test is to avoid having to consider “defences” which have been described as meritless, outlandish, fanciful, far-fetched and speculative and not founded on evidence: *R. v. Cinous* (2002), 162 C.C.C. (3d) 129 (S.C.C.) paras. 48-84; *R. v. Savoury (supra)* at paras. 44 and 45. To consider defences which lack an evidentiary foundation would invite a verdict not supported by the evidence.

[7] The test to determine if a defence possesses an “air of reality” is if a properly instructed jury (trier of fact) acting reasonably, could acquit on the basis of the defence: *R. v. Cinous (supra)*, at paras. 2 and 49. So long as there is an “air of reality” to the defence, either on the evidence presented by the Crown or by the defence, the defence is entitled to be considered.

[8] In *R. v. Osolin* (1993), 86 C.C.C. (3d) 481 (S.C.C.) at p. 531 Cory J. provided the following definition of air of reality:

...The term “air of reality” simply means that the trial judge must determine if the evidence put forward is such that, if believed, a reasonable jury properly charged could have acquitted...

[9] A finding that there is sufficient evidence to provide a defence with an “air of reality”, shifts the burden to the Crown who is then legally obliged to prove beyond a reasonable doubt that the defence does not apply.

[10] The test has two components. First, there must be some evidence on the issue and second, the evidence must be such that a jury properly instructed could reasonably draw the inferences necessary to acquit the accused. That is, whether

there is evidence reasonably capable of forming the basis for an acquittal: *Cinous (supra)* at para. 61.

[11] The test is not, is there some evidence? Rather, it is whether there is evidence reasonably capable of supporting an acquittal: *Cinous (supra)* at para. 83.

[12] A judge has a positive duty to keep from the jury defences lacking an evidentiary foundation: *Cinous (supra)* at para. 51. The duty extends to cases in which the accused's only defence is one lacking an air of reality: *R. v. Latimer* (2001), 150 C.C.C. (3d) 129 (S.C.C.).

[13] The evidence in support of the defence can be found in the evidence of the accused either in examination-in-chief or in cross-examination as well as from Crown or other witnesses. The defence can rest on the factual circumstances in the case or from "any other evidential course on the record". There is no requirement that the defence be based on defence evidence: *Cinous (supra)* at para. 53.

[14] The "air of reality" test imposes an evidentiary burden on the accused, not a burden of persuasion in regard to any defence: *R. v. Schwartz* (1988), 45 C.C.C. (3d) 97 (S.C.C.). In the context of a judge sitting alone the test is only concerned with whether or not a defence should be considered. It is not whether it should or would be accepted by finding the Crown has not proven beyond a reasonable doubt that the defence does not apply: *Schwartz (supra)* at p. 156.

[15] The Court must consider all of the evidence and make a threshold determination of whether there is an "air of reality" to the defence being advanced. The substantive merits of the defence are to be determined subsequently. Whether or not the evidence is sufficient or insufficient to establish guilt beyond a reasonable doubt is a distinct question.

[16] In determining whether there is an "air of reality" to the defence the Court must proceed on the basis that the evidence relied upon by the accused in support of the defence is true: *R. v. Osolin (supra)*; *Cinous (supra)* at para. 119. Credibility is not an air of reality issue. At this initial stage the Court does not make findings of credibility, weigh the evidence, make findings of fact or draw factual inferences. The question here is not whether the defence is likely, unlikely, somewhat likely or very likely to succeed. It is whether the evidence reveals a real

issue to be decided, not how that issue should be determined: *Cinous (supra)* at para. 54.

[17] If, upon a review of all the evidence, it is decided that if believed the evidence could permit a properly instructed jury acting reasonably to acquit, then the defence must be considered: *Cinous (supra)* at para. 87. It is only if there is direct evidence in regard to every element of the defence from any source that the defence can be considered by the Court on the ultimate issue.

[18] A determination of whether there is an air of reality to a defence is somewhat more complicated if one or more of the elements of the defence has an objective component. In the present case the accused relies on the statutory defence contained in s.17 of the *Criminal Code* as well as the common law defence of duress which has both a subjective and objective component. In these circumstances the question is whether the remaining elements may reasonably be inferred from the circumstantial evidence. This question involves a limited weighing of the evidence: *Cinous (supra)* at paras. 89 and 90.

[19] Having considered all of the evidence presented from both Crown and defence witnesses I am satisfied that both the statutory excuse contained in s.17 of the *Criminal Code* and the common law defence of duress have an “air of reality”. They will, therefore, be considered in reaching a verdict.

[20] Counsel for Stephen in his summation indicated that the general allegations made in this case were not seriously contested by the defence. He acknowledged that the Crown had established a *prima facie* case on the first count in the indictment, that is that Stephen possessed real property or proceeds of property, chattels and money, knowing that all or part of it was obtained or derived directly or indirectly as a result of trafficking in narcotics. What was questioned was the valuation process and the circumstances under which Stephen possessed those proceeds.

[21] With respect to the second count on the indictment Stephen’s counsel did not contest that she dealt with the property; that the property was obtained by trafficking in narcotics; that she knew or believed that the property had been obtained by trafficking in narcotics or that she refinanced the matrimonial home in April 2000. Counsel for Stephen argued that her actions were simply those of a person who was faced with a loss of income. In other words that she did not intend

to conceal or convert the property. His submission was that the proceeds of the refinancing were used to pay off legitimate debts, retain counsel for Patriquen and to repay a promissory note owed to Mr. Gauthier.

[22] The *Criminal Code* does not define property, proceeds of property, or how a person may deal with property. The word property refers to anything of value that a person owns including but not limited to money, vehicles, goods, securities, real property and personal effects. In the present case the property in question is real property and the allegation is that the property was converted by transferring it to another person, in particular that the real property which was in the name of both Patriquen and Stephen was transferred to Stephen's name alone and that the equity in that property was withdrawn.

[23] Proceeds of property signifies money, articles or other things of value or interest in them arising out of or obtained by the sale or other disposition of the original property.

[24] The evidence supports a finding that Stephen dealt with the real property located at 93 Orchard Drive, Middle Sackville, Nova Scotia. Stephen admitted during cross-examination that prior to the raid on the residence in February 2000 she had suspicions that trouble was coming. After the police arrested Patriquen and searched the home Stephen was worried about money. She knew that the police action was not only in relation to drug trafficking but also with respect to the proceeds of crime. She testified that she and Patriquen discussed what they would do about money. A plan was devised to get money out of the property registered in both their names. This money, obtained by way of refinancing the property, was according to Stephen's testimony to be used to pay bills and repay a loan to Patriquen's mother as well as to finance Patriquen's defence regarding the charges against him. I do not accept that this was the intent of the refinancing.

[25] The loan application used to obtain refinancing in 2000 was in Stephen's name alone. Previously the property had been in the name of both Stephen and Patriquen. Stephen provided the bank with false information regarding her separation from Patriquen. Once the money for refinancing was approved and the money advanced Stephen obtained seven bank drafts made out to her in the amount of \$8,000.00 each. She obtained these bank drafts and cashed them on the same day at different banks. Her evidence was that these bank drafts were to repay a promissory note to Philip Gauthier, however there is no evidence that this note,

which was only due in January 2002, was ever repaid. Stephen was aware that Patriquen was facing a proceeds of crime charge and that she and her husband could lose everything as a result. The matrimonial home was something Stephen was very proud of and she feared losing it. I do not accept Stephen's evidence that she was simply doing what Patriquen told her to do. I am satisfied beyond a reasonable doubt that Stephen dealt with the property or proceeds of the property.

[26] The second question to be answered is whether the property was obtained by trafficking in narcotics. There is an abundance of evidence showing that the property was so obtained. Stephen's testimony confirms that she knew her husband was a drug trafficker and that money from his illicit activities was used to finance their lifestyle including things such as the mortgage payments on their home, groceries, their daughter's private school tuition, the purchase of electronic equipment and family vacations. I am satisfied that this second element of the offence has been proven beyond a reasonable doubt.

[27] The third element is whether Stephen knew or believed that the property had been obtained by trafficking in narcotics. It involves Stephen's knowledge or belief about the origins of the property with which she dealt. Knowledge and belief are states of mind. To know something is to be aware of it, to perceive or understand it as fact, to apprehend it clearly and with certainty. To believe something is to have confidence or faith in it and, as a result, to rely on it as true. It is not incumbent on the prosecution to prove both knowledge and belief. Either one, proven beyond a reasonable doubt, is sufficient.

[28] Stephen acknowledged being willfully blind about where the money was coming from to make expensive purchases such as, for example, the Volvo motor vehicle. She stated in cross-examination that she did not ask where the money was coming from nor did she want to know. Stephen's evidence in both direct and cross-examination establishes that she knew her husband made his money by dealing in narcotics. She also knew that their family lived a lifestyle which was well beyond what could be afforded on her salary alone. Stephen admitted that between the years 1995 and 2000 the money that flowed through Patriquen's hands had to be drug money because she, during that period, knew that he had no legitimate source of income. Stephen acknowledged that she never saw any evidence or indicators of legitimate employment for Patriquen. Her evidence also confirms her knowledge that the mortgage payments on their residence came from Patriquen's illegal source of funds.

[29] The totality of the evidence satisfies me beyond a reasonable doubt that Stephen knew that the property was obtained by the trafficking in narcotics.

[30] The final element which must be proven beyond a reasonable doubt is that Stephen intended to conceal or convert the property. This element also refers to Stephen's state of mind. Intention has to do with the purpose for which Stephen dealt with the property. To intend to conceal something means to intend or mean to hide it or keep it away from the knowledge or observation of others, to put it out of sight. To intend to convert something means to intend to change its character, to apply it to some other use, to turn it into something different than it was in its original form.

[31] Both concealment and conversion are not required to be proven beyond a reasonable doubt. Either an intent to conceal or an intent to convert is sufficient.

[32] In looking at what Stephen did or did not do in dealing with the property, how she did or did not do it and what she said or did not say about it, what is clear is that she was intending to conceal the true purpose of the transaction used to refinance the matrimonial home in April 2000.

[33] Stephen lied to the bank on the information she provided to the bank in the loan application used to refinance the property. She referred, in that application, to paying out her "ex-spouse's" interest in the home even though she and Patriquen had not separated. She provided the bank with a false document which referred to Patriquen relinquishing his rights and equity in the property to Stephen. Stephen obtained the refinancing in her name alone at a time when she and Patriquen were aware that charges relating to proceeds of crime were a distinct probability.

[34] On February 28, 2000 the RCMP entered the residence of Stephen and Patriquen under warrant. The warrant was read to Patriquen and a copy of that warrant was left at the residence. The warrant related to an investigation being conducted for the possession of proceeds of crime. Although the search warrant did not name Stephen I am satisfied, given the nature of her relationship with her husband, that she was aware that a proceeds of crime investigation was being conducted by the RCMP at a time when she refinanced the property.

[35] She and Patriquen discussed what they would do. The property was in both their names. A plan was devised to re-mortgage the property and remove the equity that had accrued. The outstanding balance on the old mortgage was \$33,000.00. A new mortgage for \$145,000.00 was put in place. Stephen wanted the refinancing to be completed as soon as possible. Stephen was the only person who dealt with the bank and the mortgage funds were dispersed according to her instructions. Outstanding debts were paid off and the remaining \$56,000.00 was put into seven bank drafts in the amount of \$8,000.00 each made out to Stephen. She then cashed these on the same day at different banks.

[36] It is illogical to say that Stephen's actions were simply those of a person faced with a loss of income since, by refinancing the property in her name only, she put herself in a more precarious financial position.

[37] The totality of the evidence proves beyond a reasonable doubt that Stephen intended to conceal or convert the property.

[38] The issues raised on the first count in the indictment are therefore: (1) What was the value of the proceeds of crime possessed by Stephen? (2) What were the circumstances under which she possessed them? In other words whether Stephen was acting under duress.

[39] The issues with respect to the second count are: (1) Stephen's intent when she refinanced the matrimonial home; and (2) whether she was acting under duress when she did this.

[40] The totality of the evidence presented establishes the following facts. The accused Stephen and Patriquen were married on August 11, 1982. At the time of their marriage Stephen knew that Patriquen was involved in the illicit drug trade for profit. Patriquen was a good friend of Stephen's brother, Douglas, who was also involved in the drug trade. Stephen met Patriquen in 1979. At that time Patriquen and Douglas Stephen were renting a flat in Halifax. Stephen met her future husband when she visited her brother at that location. The accused Stephen's cousin, Kevin Stephen, who was subsequently involved with Patriquen and Douglas Stephen in a conspiracy to import narcotics, may also have resided in the same flat.

[41] Patriquen was a drug dealer who had a substantial record for drug offences dating back to 1977 when he was convicted of simple possession of marihuana under the *Narcotics Control Act*. In 1983 Patriquen was convicted of possession of cocaine and received a fine. His co-accused at that time was Stephen's brother Douglas.

[42] Patriquen was convicted in 1985 of conspiracy to import narcotics. This offence took place in December 1984 and he received a term of seven years imprisonment. Stephen's brother Douglas and cousin Kevin were co-accused with Patriquen on this offence.

[43] Patriquen was charged again in 1992 with drug offences. This time it was for possession and cultivation of marihuana. Patriquen was eventually convicted of these offences in 1997 and received a sentence of 12 months incarceration.

[44] In March 2002 Patriquen pled guilty to one charge of conspiracy to possess marihuana for the purpose of trafficking and one charge of conspiracy to traffick in marihuana. These charges covered an offence period from January 1999 to June 2000. On September 10, 2002 Patriquen was sentenced to six years imprisonment on each count to be served concurrently.

[45] Patriquen subsequently entered a plea of guilty to the first count on the indictment before this Court and on January 14, 2005 he was sentenced to a period of three years incarceration to run concurrently with the six year sentence which he had received in September 2002. The sentence imposed was as a result of a joint recommendation.

[46] The Crown sought a fine of \$272,807.00 in lieu of forfeiture. Patriquen was fined a total of \$259,427.00 because the sentencing court applied the \$13,380.00 in cash seized during the search of his residence and forfeited to the Crown against the fine amount.

[47] The Agreed Statement of Facts filed as Exhibit 1 in these proceedings discloses that in November 1998 the RCMP commenced an investigation into the financial affairs of Patriquen and subsequently the investigation included his wife Stephen. This investigation ran concurrently with an ongoing drug investigation. Wiretap authorizations were granted at various times in 1999 and 2000. The drug

investigation culminated on February 28, 2000 at which time the police executed numerous search warrants and arrested both Patriquen and his co-accused.

[48] Ultimately the following individuals were charged and convicted of offences reflecting their respective involvement in the illegal drug trade with Patriquen. The conspiracy spanned the provinces of Newfoundland and Nova Scotia. In Newfoundland James Donald Sharpe, Ian David Murray and Marvin Reginald Coates were convicted. In Nova Scotia, John Ross Hollingsworth, Gerald Joseph Jollymore, James Stewart McCurdy and Mark Allen Trembley were also convicted.

[49] In July 1998 Donald Sharpe and Marvin Coates were seen meeting with Patriquen at a restaurant in Halifax. Patriquen and Sharpe were seen together again later that month.

[50] In August 1998 police observed Ian Murray's vehicle parked in the driveway of the Patriquen home at 93 Orchard Drive, Middle Sackville.

[51] In December of 1998 Patriquen was observed in St. John's, Newfoundland carrying a small black leather case and meeting with Donald Sharpe at a local pool hall. When Sharpe left the bar he was seen carrying a small black leather case and Patriquen was observed returning to his hotel without the small black case which he had in his possession when he met Sharpe.

[52] In March 1999 the RCMP received authorization to install a tracking device in a motor vehicle operated by Patriquen. This 1994 Ford Taurus was registered in the name of the accused Stephen. During the course of the installation process the police located a modified, electronically controlled, hidden compartment behind the rear seat of the motor vehicle. This compartment could only be accessed by activating a switch under the dash while the ignition was on and folding down the back of the rear seat. The police observed in this compartment six separate bundles of Canadian currency. The money was counted by the police and totalled \$26,000.00. The distinct smell of cannabis resin was also noted during the process of counting the money.

[53] In April 1999 Patriquen was seen meeting with Donald Sharpe in St. John's, Newfoundland. The officers conducting the surveillance described seeing something under the table where the men were seated and observed that when

Patriquen left the restaurant to return to his hotel he was carrying a knapsack which had not been in his possession when he entered the restaurant. Patriquen returned to the airport and boarded his flight to Halifax. Patriquen's luggage was seized and inside the luggage the police located a knapsack which was found to contain three packages. The first package which the police were able to access contained currency estimated to total approximately \$50,000.00. The other two packages were not opened by the police as they were concerned that any attempt to verify the precise contents of the package would result in Patriquen detecting their contact with the luggage. As a result the police were only able to estimate the quantity of currency and placed that amount at a minimum of \$100,000.00. Upon his return to Halifax Patriquen placed his luggage in the trunk of a green Ford Taurus and then drove deeper into the parking lot where he exited the vehicle and opened the trunk. Patriquen leaned across the driver's seat, returned to the trunk, removed something and then put it in the rear driver's side seat. It appeared that Patriquen was adjusting the rear seat backing. He then drove to the matrimonial home at 93 Orchard Drive.

[54] In May 1999 Patriquen was again observed by the RCMP meeting with Donald Sharpe in an open field outside a building in St. John's. After this meeting Patriquen drove to the St. John's airport in order to board a return flight to Halifax. After he had checked his luggage the RCMP searched the suitcase. Inside the luggage the police located a bag which contained a variety of bundles of currency which were estimated to contain a total of \$35,000.00 namely three bundles of \$10,000.00 each and one bundle with \$5,000.00. The suitcase was returned to the luggage stream and the money was left in the luggage. The police noted that Patriquen returned to his matrimonial home upon his arrival in Halifax.

[55] In June 1999 the RCMP, acting under judicial authorization, installed a tracking device in a blue Ford Taurus belonging to Donald Sharpe. They located a modified, electronically controlled, hidden compartment behind the rear seat in that vehicle. The compartment could only be accessed by activating a switch under the dash. During the installation process the police located and seized 41 pounds of cannabis resin.

[56] In July 1999 the RCMP installed a tracking device in a vehicle owned and operated by Ian Murray. They once again located a modified hidden compartment behind the rear seat of that vehicle.

[57] In August 1999 the police, while installing a judicially authorized audio probe in Patriquen's 1994 Ford Taurus, located hidden in the secret compartment of the vehicle a bag containing \$5,900.00 in cash which had been divided into six separate bundles.

[58] Later on that same month Ian Murray was the driver of the same motor vehicle in which the police had noted a hidden compartment. Murray and the vehicle boarded a ferry bound for Newfoundland. While the vehicle was parked on the ferry the RCMP, acting under warrant, searched the vehicle and located a large black kitbag in the trunk containing cannabis marihuana. The following day Murray was observed meeting with Donald Sharpe in St. John's and seen taking a large black kitbag from the trunk of his vehicle and carrying it to Sharpe's vehicle. The police arrested both Sharpe and Murray and found the kitbag which contained 10.7 pounds of cannabis marihuana and 3.61 pounds of cannabis resin. The value of the seized cannabis product was estimated to be in the vicinity of \$100,000.00.

[59] In October 1999 the RCMP, acting under judicial authorization, installed an audio probe in the residence of James McCurdy. During the installation process the police observed a room set up for drying harvested marihuana plants and containing dry marihuana shake. Another room was set up as a starter room with several trays of very small plants under grow lights and the basement was set up for cultivation purposes.

[60] During the course of the investigation authorizations were obtained to intercept the private communications of various parties. On a variety of occasions several of the co-accused referred to Patriquen as "the boss" or "the grande fromage" and "the banker". The intercepted communications also describe Patriquen as having the ability to "fire" certain co-accused who in fact received instructions from Patriquen as to their respective roles and obligations in the cannabis operation.

[61] At no time, either during the day or evening, while surveillance was conducted on Patriquen did it appear that he attended a lawful place of employment. As well, the monitoring of the intercepted communications did not disclose evidence that Patriquen had any lawful employment.

[62] On February 28, 2000 the RCMP executed a number of search and arrest warrants. The accused Patriquen and Stephen were arrested at their home on

Orchard Drive. The evidence shows a well furnished and decorated home with extensive stained glass and many different pieces of electronic equipment throughout the house. No grow operation was found at their residence.

[63] An active commercial marihuana grow operation was found by the police in the basement of John Hollingsworth's residence. It contained 48 plants in a mature state. The police found items consistent with a commercial grow operation such as high wattage light bulbs and shields, scales, timers, temperature gauges, fertilizer, fans, large and small planting pots, pagers and a cell phone.

[64] At the residence of Gerald Jollymore the police located a hydroponic cannabis marihuana grow operation throughout the residence. This well planned operation consisted of 352 plants in various stages of growth. Again the police recovered items consistent with a commercial grow operation such as high wattage light bulbs and shields, timers, temperature gauge, fertilizer, fans, electric heater, humidity guides, etc. The police also noted that the main power feed into the residence had been bypassed.

[65] At the residence of James McCurdy the police discovered a sophisticated active marihuana grow operation. This was a hydroponic grow operation which consisted of 170 plants in various stages of growth. As with the other residences items consistent with a commercial grow operation were also seized. At this residence the police also seized 80 grams of dried cannabis marihuana as well as 9973 grams of cannabis marihuana shake. The presence of both dried cannabis and the cannabis marihuana shake indicated that this was an ongoing operation which had been operational prior to the current crop that was being grown.

[66] In the period between May 1995 and December 1996 Stephen bought and sold five different vehicles. Three of these vehicles purchased by her were Ford Taurus' models similar to the ones in which secret compartments were found when searched by the police. She sold two vehicles to Ian Murray who was part of Patriquen's drug operation.

[67] In December 1996 a 1997 Volvo was purchased in Stephen's name. The \$52,852.65 paid for the vehicle came from cash and cheques. Full payment of the cost of this vehicle was made over a 19 day period. The cheques were not written on bank accounts known to have been used by either Patriquen or Stephen.

[68] In May 1988 they purchased their home. In 1995 Lot 15A was purchased with the proceeds of a loan. Lot 17A purchased in November 1997 and Lot 13A in June 1999 were financed by Patriquen's illegal activities. There was no documentary evidence presented to show that these lots were purchased with borrowed funds.

[69] On the loan application used to refinance the matrimonial home in 2000 Stephen indicated that she and Patriquen had received a \$75,000.00 inheritance. A review of the financial documents does not support a finding that this inheritance was ever received. I conclude that Stephen made a false declaration on the application to refinance the home.

[70] Stephen testified on her own behalf. The following is evidence of Stephen which I accept. She was at times during her relationship with Patriquen assaulted by him with the most serious being when they lived in Jamaica. The physical violence de-escalated both in nature, frequency and severity after that. When Patriquen abused her in Jamaica she did not just sit and take it, she gave him lip.

[71] She stood by Patriquen and was supportive of him every time he was jailed.

[72] She never saw money earned by Patriquen from Stevemark and does not know if he made a legitimate income from this source. Between 1995 and 2000 she saw no proof that Patriquen had legal income but did see proof that he had illegal income. She knew he operated grow houses and had people working for him and that he was the boss.

[73] She has always been a self-sufficient woman. She made sure that she was repaid for any money Patriquen borrowed from her. Between 1995 and 2000 Patriquen's money paid the mortgage and loan obligations. The extensive stained glass in the home was paid for with drug money or marihuana. Patriquen paid for the big ticket items, such as the mortgage, trips and electronics. Her daughter's school tuition was paid for with drug money as well.

[74] She knew Patriquen had a secret compartment built in the downstairs area of their home and a secret compartment put in one of their vehicles. She saw a money counting machine which Patriquen showed her.

[75] She signed a false document (Gauthier promissory note) in the presence of a lawyer indicating that she had received \$65,000.00 from Gauthier when she had not.

[76] She cashed seven bank drafts for \$8,000.00 each made out to her in one day at different banks so as not to draw attention. She never repaid Gauthier and he never requested repayment.

[77] Groceries and heating fuel were mostly paid for with Patriquen's drug money.

[78] She never witnessed any exchange of money between Patriquen and Peter MacLean and Patriquen never told her that he had obtained property in Jamaica as a result of a promissory note that he held from MacLean.

[79] Stephen lied to the bank when she refinanced the home in 2000. She knew at that time that Patriquen was facing a proceeds of crime charge. Exhibit 35, page 3535 was signed by her to make it appear that she and Patriquen had separated when they had not. This was not the first time she lied to the bank. I accept that during her marriage to Patriquen they never separated yet she signed a note at Exhibit 41A, page 195 dated September 17, 1993 which described a financial agreement between her and Patriquen during their "separation". She also wrote a letter to her bank manager dated May 19, 1995 saying that she had retrieved a copy of a financial agreement in effect between her and Patriquen during their separation.

[80] She lied to the police after the McCurdy stabbing incident to protect Patriquen.

[81] There were occasions when she became physical with Patriquen such as pulling his hair, ripping his shirt and hitting him with the handle of some scissors.

[82] I accept that every time Patriquen was arrested and charged the tension in the home would escalate. She argued regularly with Patriquen about his drinking. When Patriquen was jailed in 1985 she could have left him but did not. The same applies to his incarceration in 1997 and 2002.

[83] She did not try to obtain medical records from her family physician Dr. Lappin. At times during her relationship with Patriquen she abused alcohol. I accept that she saw Mary Haylock to determine if she suffered from battered woman syndrome and Ms. Haylock told her that she did. I also accept that she believes what Ms. Haylock told her and has trust in her. Being told by Ms. Haylock that she was battered made her understand events in her life and she views the negative events in her life with the knowledge that she acquired from Ms. Haylock and the belief that she was a battered wife.

[84] Living with a drug dealer who drank a lot was stressful. Both she and Patriquen drank too much and both were abusive towards each other.

[85] She lied to the parole officer who was conducting a parole assessment on Patriquen in order to get him out of jail.

[86] Her evidence was that she was threatened by Patriquen after the McCurdy stabbing incident when he threatened to kill her and McCurdy because he believed his best friend had been intimate with her. These threats were captured on a room probe recording. I accept that she did not tell the police about his threats or that he had hit her that evening because at that moment she was afraid of him. Her fear was no doubt a result of seeing the violence Patriquen had inflicted on McCurdy and the fact that he had punched her and knocked her unconscious.

[87] I do not accept Stephen's evidence with respect to the following: That up to January 2006 she believed that Patriquen did part-time freelance work in computers and accounting; That she was not good at mathematics. As territory manager for Hartz Canada she had to prepare her accounts to the company every two weeks. She also prepared expense accounts for nine years while working at Triple-C-Inc. and she kept track of money that Patriquen owed her. Stephen also testified that she taught her son how to balance a cheque book. All these things speak against her evidence that she was not good at mathematics.

[88] I do not accept that she did not know how to do her tax return and that that was the reason why Patriquen did them, nor do I accept her evidence that she takes no responsibility for claiming Patriquen as a dependent on her Income Tax returns. Stephen was complicit in covering up her husband's illegal activities. This was the reason for her claiming Patriquen as a dependent on her tax returns.

[89] Her evidence that she was unaware of Patriquen's involvement in illegal activities between 1987 and 1991 is rejected.

[90] Her evidence that the house was refinanced in 2000 in order to pay for Patriquen's lawyer and to pay off credit card debts and repay the Gauthier promissory note is not credible. The evidence of Ms. Shea shows that only \$1,000.00 was repaid to Gauthier and a review of the note confirms that it was not due until January 2002. I reject her claim that Patriquen directed everything that she did regarding the refinancing in 2000. Her evidence that she did not know her way around Dartmouth when trying to find the fellow that Patriquen had sent her to in order to refinance the home is simply not credible. She was a travelling sales representative her entire career.

[91] I do not accept her evidence of a recovered memory regarding her father, whom she adored, abusing her nor do I accept that Patriquen used this memory which she shared with him by reminding her that her father was a pervert. I do not accept that her mother attempted to smother her in her crib when she was 14 months old or that she could remember such a thing occurring at that age.

[92] On the intercepted communications Exhibit 26 at Tabs 28 and 29 where Stephen spoke to Patriquen about his drug business, I do not accept her evidence that she was doing this just to distract him. I reject as well her evidence regarding the conversation at Exhibit 26, Tab 30 where she spoke to Patriquen about profit arrangements with McCurdy that she was just making conversation to keep the focus off of her. I do not accept her testimony regarding intercept Exhibit 26, Tab 18 where she told Patriquen that she wished Ian Murray would plead guilty, that she said this because she thought Patriquen was out of the drug business.

[93] I reject her evidence that her relationship with Patriquen broke down in March 2004 after Patriquen's release from jail. I also do not accept that she told him they should separate or divorce or that he threatened her at that time.

[94] I do not accept that she obtained seven bank drafts for \$8,000.00 each made out in her name to repay the Gauthier promissory note and to pay off other debts. I do not accept that she was just doing as she was told when she refinanced the house in 2000 and that she did not have the house put in her name alone to avoid it being taken as a proceeds of crime. The house was her pride and joy. She acknowledged that she did not want to lose it.

[95] At the commencement of the trial it was agreed by the parties that the funds in issue in this case came from the sale of marihuana. The only issue in the drug trial portion of this proceeding was the valuation of the three grow sites in Nova Scotia. Accordingly, evidence was led regarding searches conducted at these residences on February 28, 2000 and the estimated value of the drugs found at these locations.

[96] At the McCurdy residence a total of 170 plants were found in different parts of the house. One hundred and forty-eight immature plants were found in an upstairs propagation room. The basement contained one dry plant and 22 mature plants growing under grow lights. The plants in that residence were at all different stages of growth.

[97] The Hollingsworth site contained 48 plants in a basement grow room. These plants were of uniform height and growth.

[98] In the search of the Jollymore residence 145 plants were found. These plants were in various locations throughout the house and all were under high intensity lights. One table had plants which were approximately 12 inches tall. The basement plants were approximately 20 inches tall. These plants were under lights which were on tracks allowing them to move. This speaks to the level of sophistication of the grow operation. It was not a simple user basement job as described by the defence.

[99] Mark Gorbet a retired RCMP officer testified as an expert witness with respect to the cultivation and valuation of marihuana. He filed a report (Exhibit 11) estimating the value of the various grow sites.

[100] Mr. Gorbet gave evidence about two different growing processes, a two-stage and a three-stage process. He described the two-stage grow process as a hurried plant life cycle which skips the vegetative state and forces the plant into its flowering stage. Forty to 60 days are required before a crop is produced from such plants. The three-stage growing cycle he referred to as the more normal cycle going from germination to growing phase, then to the vegetative state and finally the flowering stage. The two-stage plants are shorter, usually 12 to 16 inches tall. The three-stage plants are larger and range in size from 14 to 48 inches tall when

grown indoors, whereas when grown outdoors they can range from 72 to 96 inches tall.

[101] In order to value a grow he had to factor in the potential number of crops. Two-stage grows could have yielded up to six crops whereas three-stage grows could have produced up to three crops. The two-stage grow produces less plant, therefore less bud.

[102] He estimated that in a two-stage grow a single plant would usually produce one ounce of flowering bud, the most valuable part of the marijuana plant. In a three-stage grow a single plant would produce 2.5 ounces per plant.

[103] His opinion was that the McCurdy operation was a three-stage grow. He based this primarily on the size of the plants and the three growing rooms together with a propagation room. For purposes of his report he assumed that there were 170 plants in a three-stage grow. Each grow would yield an estimated 26.5 pounds of saleable marijuana. Seventy-eight pounds would be produced if three grows per year were harvested. At the time of the seizures the selling price of one pound of marijuana was between \$2,500.00 and \$3,500.00. Estimating that one crop would sell for \$2,500.00 per pound, the McCurdy grow was valued at \$66,250.00 or \$198,000.00 if three grows had taken place. These estimates were based on the assumption that all plants would have lived and matured. Mr. Gorbet referred to a possibility of having more crops if crops were started at different times.

[104] The Hollingsworth residence he described as a three-stage grow operation. He estimated that the 48 plants would produce 7.5 pounds of marijuana per crop. If each pound was sold at \$2,500.00 it would mean \$18,500.00 for one crop or \$56,250.00 if three crops were produced. The Hollingsworth operation was not as technically sophisticated as the McCurdy grow operation. There was no propagation room or drying room.

[105] The Jollymore site had a propagation room upstairs and the basement was used to capacity to grow marijuana plants. Two hundred and seven plants were found in the upstairs and 145 plants in the downstairs. The upstairs plants were immature and appeared to be cuttings from the mother plant. They were at a stage where they were just starting to take root. He assumed that the downstairs plants were a hybrid grow, that is something between a two and a three-stage grow. He estimated 145 plants would produce 1.5 ounces per plant for a total of 13.6 pounds

for that crop. Selling at \$2,500.00 per pound each crop was estimated to be worth \$34,000.00. On the assumption that four or six crops would be produced and each crop was valued at \$34,000.00 it would give an estimated value of \$136,00.00 to \$204,000.00.

[106] Mr. Gorbet's evidence shows that there could be a broad range of yield depending on the type of plant used and how it was grown. He agreed that quality affects price and that no quality tests were done on any of the plants seized. His opinion was based on an average yield and he agreed that the wholesale price varied depending on market conditions. The smaller plants found in the upstairs of the residences may have contained male plants. These plants would not be used in growing marijuana for sale as only the female plants are used for that purpose. He agreed there was a possible 50% attrition rate.

[107] He described these grows as not technically sophisticated to the level of some operations where the science is understood. He assessed these grow sites as being of medium sophistication. Mr. Gorbet reviewed video tapes of the various grow operations and concluded that the growers clearly were not making the most effort to maximize the growth of the plants. His opinion was that these growers knew more than the general grower, but not as much as the high end sophisticated grower. The presence of spider mite spray at one location could lead to the conclusion that the grower knew about the problem or had experienced it. The McCurdy grow was under utilized and several tables were not being used. The McCurdy grow was in his opinion not a good return for the investment since it was an inefficient operation. He did add, however, that it could also have been that they were starting afresh.

[108] Mr. Gorbet prepared his report based on a report written by Constable Waterfield, however, when he viewed the video tapes and the photographs tendered into evidence, he modified his report with respect to the Jollymore grow site and reduced the estimated yield per plant, changing it from 2.5 ounces to 1.5 ounces per plant.

[109] I accept that any inconsistency between his evidence at the preliminary inquiry and at trial was based on his not having seen the videos or the photographs at the time of the preliminary inquiry. I accept his trial evidence.

[110] The Crown has established that at least \$272,807.00 came from Patriquen's illicit drug activities. Patriquen was sentenced on the first count in this indictment to three years imprisonment concurrent to the sentence he was serving and fined \$259,427.00 in January 2005.

[111] The Crown, in closing argument, urged the Court to find that Patriquen earned much more from his drug operations than the \$272,000.00 revealed by Ms. Shea's financial analysis. The Crown pointed to an estimated \$161,000.00 surreptitiously discovered in Patriquen's car and luggage in the three month period between March and May 1999. It also argued that the grow operations were ongoing operations that had a past, that some were operating at full capacity and others were not.

[112] Although the Crown's argument possesses some appeal it must, for the following reasons, be rejected. To arrive at an amount larger than that which was found by Ms. Shea through a detailed and thorough analysis would require assumptions, speculation and conjecture. It would require the Court to assume that each plant in each grow operation was a female plant capable of producing a saleable product. Mr. Gorbet acknowledged a potential 50% attrition rate. It would also require the Court to speculate and assume that each plant in each grow would have matured to the flowering stage; that the plants would not have been affected by disease of any sort; that each grow operation would have operated consistently and year round; that three or four crops would have been harvested yearly; that the wholesale price of marijuana would have remained the same or increased; that Patriquen was working at his illicit business year round; that his expenses would have remained the same; that seizures by the police, for example the 41 pounds of cannabis resin seized from Sharpe in June 1999 and the 10.75 pounds of marijuana and 3.6 pounds of cannabis resin seized from Murray in August 1999, would not have impacted on the profits earned by Patriquen and that Patriquen would have remained the boss of the operation.

[113] Although my suspicions are high that Patriquen earned more money than Ms. Shea attributed to him I cannot quantify that amount nor can I make a finding of fact that he did. To do so would be to base a finding of fact on speculation and conjecture.

[114] At the request of the RCMP Integrated Proceeds of Crime Section Lori Shea, a Chartered Accountant and Certified Forensic Examiner, prepared a financial

analysis report for Patriquen and Stephen for the period between January 1, 1995 and February 29, 2000. Her report, Exhibit 67, was based on the information and documents obtained by the RCMP during their investigation. The purpose of the financial analysis was to identify Patriquen and Stephen's various known sources of funds and total spending and to determine whether Patriquen and Stephen had sufficient funds from known sources to pay for their total spending during that period. In 1988 Patriquen and Stephen bought their home. Since then they acquired three additional lots on the same street and renovated their home. Ms. Shea identified spending by Patriquen and Stephen on vacations, jewellery, electronics, furniture, clothing and other assets.

[115] The analysis was prepared using the net worth methodology which is a set of calculations that provide a financial summary for a specified period of time. The financial summary details what the family unit owns (asset) owes (liabilities) spends (expenses) and earns (funds from known sources) during the period. This methodology is based on the concept that funds available (funds from known sources) to a family will equal their total spending, regardless of the manner in which the funds were spent. When a family's total spending is greater than their total known sources of funds the family must have had additional sources of funds available to them.

[116] In the net worth methodology an asset is defined as an item of value owned or controlled that would be expected to provide a future benefit either through use or resale or both. Cost is defined as the amount of cash or cash equivalents paid or received. Liability or debt is defined as something owed, an obligation arising from past transactions or events that will be paid in the future. Net worth is defined as the amount by which the total cost of all known assets exceeds the outstanding total liabilities when both are measured at the same point in time. Expenses are defined as personal spending for items which do not provide a long term benefit including such things as automobile fuel and maintenance, bank charges, clothing, food, education, telephone and other utilities, insurance, interest, legal fees, personal care, pet care, sporting goods, business travel and vacation expenses among other things. Total spending is defined as amounts paid for the increase in net worth and expenses.

[117] Ms. Shea concluded, based on the comparison of known sources of funds to total spending, that Patriquen and Stephen had additional sources of funds available to them, the origins of which were unknown. Ms. Shea found, and I

accept her evidence, that they must have had \$272,807.00 in excess funds available to them from unknown sources. During the relevant period Patriquen and Stephen spent over \$50,000.00 on household improvements. The majority of this money was spent in 1998. A loan for \$25,000.00 was obtained from the Bank of Montreal in 1998, however the other \$25,000.00 would appear to have come from unknown sources.

[118] Ms. Shea noted that approximately \$66,000.00 was withdrawn from Stephen's bank account from January 1995 to February 2000. Some or all of these withdrawals could have been used to pay for cash spending identified throughout her report. Therefore she did not include these cash withdrawals in the expenses shown on Schedule 6 in order to ensure that spending was not included twice.

[119] Ms. Shea concluded, based upon her analysis of the available information for the period from January 1, 1995 to February 29, 2000, that Patriquen and Stephen increased their known assets by \$202,079.00. They increased their known debt by \$70,233.00. Their net worth increased by \$131,846.00 as a result of their increase in assets and decrease in liabilities and they spent an additional \$489,995.00 on expenses. The total increase in net worth and expenses was \$621,841.00 and the total of the known sources of the funds available to them was \$349,034.00. The total increase in net worth and expenses exceeded the known sources of funds by \$272,807.00 which means that they must have had funds from unknown sources in that amount because they spent that much more than they had in known sources of funds.

[120] I accept Ms. Shea's evidence and her report as accurately establishing the amount of funds Patriquen and Stephen had from unknown sources.

[121] It would be speculative to conclude that Patriquen earned money from lawful income during the charge period so as to reduce the amount found by Ms. Shea as coming from an unknown source of income. I am not persuaded that Patriquen worked at any legitimate employment which would have provided him with a source of income from lawful means during the relevant time frame.

[122] A detailed review of the defence and rebuttal evidence which follows is necessary in order to assess the viability of the defences raised. Included in this review are my findings on the credibility and reliability of that evidence.

[123] The following evidence of Stephen herself establishes that she knew she was in possession of the proceeds of crime and that she dealt with property with the intent of converting the property. Throughout her relationship with Patriquen she knew that he was a drug dealer who earned his income this way. Her evidence was that Patriquen never worked an honest day in his life. She admitted in both direct and cross-examination that she knew that her husband made money by dealing drugs. In an intercepted conversation dated August 28, 1995 (Exhibit 26, Tab 5) between Stephen and Patriquen there is reference by Stephen to putting a woman named Janice on the payroll which Stephen acknowledged to be the payroll for Patriquen's drug business.

[124] Stephen knew of Patriquen's drug business when she married him. Although her testimony was that she knew only since 1992 that her husband sold drugs to make money, the evidence establishes that she knew well before this that Patriquen made his living this way. Stephen testified that she knew of Patriquen's drug dealing as it went along.

[125] The evidence supports a finding that Patriquen had not filed Income Tax returns since 1979. Stephen testified that Patriquen told her that only fools paid taxes. Stephen never saw pay stubs from any legitimate employment that Patriquen may have had. Stephen was married to Patriquen when he was convicted in 1985 of conspiracy to import narcotics.

[126] The evidence proves as well that Stephen claimed a married exemption for her spouse Patriquen on her tax return. The married exemption signifies that the spouse claimed has earned no income.

[127] In the years between 1995 and 2000 the family lived a lifestyle well beyond what could be afforded on Stephen's salary alone. Between those years the money that flowed through Patriquen's hands was drug money and Stephen knew this. The evidence is clear that Stephen never saw Patriquen with any legitimate source of income. During that period Stephen may have hoped for prospects of legitimate employment for Patriquen but she never saw any pay stubs or other indicators that Patriquen had legitimate employment.

[128] She was well aware that when Patriquen travelled to Montreal or St. John's Newfoundland it was for his drug business. She knew that Patriquen had a secret compartment built by a carpenter in the basement panelling of their home. She was

shown a money counting machine by Patriquen and also knew that one of the motor vehicles used by Patriquen had a secret compartment.

[129] Stephen's evidence was that she dealt with the income tax firm of H & R Block to file her tax returns. She testified that if H & R. Block had any questions they would have to address them to Patriquen because he told her that this firm stood behind their work. Her denial that tax returns were filed in order to avoid raising suspicions and her evidence that she did not know about claiming dependents until much later is simply not credible. Stephen was a successful business person who always prepared the financial reports she submitted to her employer for reimbursement of her expenses and the accounting of her sales.

[130] Stephen was self-sufficient before she met Patriquen and after they were together. She had taken care of herself financially since she was 18 years old. She was scrupulous in making sure that her bills were paid on time because, according to her, having a good credit rating was important. She kept on top of her financial situation as evidenced by the fact that when Patriquen borrowed money from her she made sure that she was repaid. She kept track of any monies borrowed by Patriquen from her and often reminded him to repay the money he had borrowed.

[131] Stephen knew that Patriquen was the boss of the grow houses which others operated for him between 1995 and 1999. She admitted that most of the time between 1995 and 2000 it was money from Patriquen's drug business that paid the mortgage on their home and his drug money also paid most of a \$25,000.00 loan which they had with the Bank of Montreal. Big ticket items such as the mortgage and trips were paid for by Patriquen.

[132] Between January 1995 and February 2000 all mortgage payments came out of Patriquen's Royal Bank of Canada account.

[133] Patriquen had to have the latest in electronic equipment. The home had an overabundance of electronics. The stereo equipment located in the downstairs of their home was purchased by Patriquen using Stephen's credit card. She insisted that Patriquen repay her for this which he did. He repaid her with money earned from his drug business.

[134] Stephen admitted to signing a false document before a lawyer which was referred to as the Gauthier promissory note. Her evidence was that she did not think of the implications of signing such a false document, but rather did so because Patriquen told her to do it. Her evidence was that she believed the \$62,500.00 referred to in the Gauthier note was used to purchase a Volvo, however she never saw money changing hands between Gauthier and Patriquen. It is also noteworthy that the purchase of the Volvo was \$52,852.65 not \$62,500.00 and that Mr. Gauthier never asked Stephen, who had signed the promissory note, for repayment of the money allegedly loaned to her and that Stephen never inquired of Patriquen about whether Mr. Gauthier had asked for repayment or whether in fact he had been repaid. She did not ask where the money came from to make such an expensive purchase and stated that she did not want to know. Her evidence was that she knew Patriquen's drug money would pay for his purchases.

[135] Stephen admitted that when the matrimonial home was refinanced in April 2000, after the police had searched the home under warrant, she obtained seven bank drafts made out in her name in the amount of \$8,000.00 each. Her evidence was that this money was used to repay the Gauthier promissory note which was for \$62,500.00 and not due until after January 1, 2002. Stephen cashed all of the drafts made out in her name in one day at different banks in order not to draw attention. It was her evidence that the reason the amounts of each draft was under \$10,000.00 was because Patriquen had told her that the banks flagged cheques over \$10,000.00.

[136] It is evident that many purchases such as groceries, heating fuel, child care expenses and real property were paid for in cash.

[137] It was Stephen's evidence that all responsibility for the refinancing of the home in April 2000 should fall on Patriquen because it was his idea. She admitted that at the time of the refinancing she was concerned about their finances and the potential of losing their home.

[138] The loan application used to obtain refinancing in 2000 (Exhibit 35, p.3506) contains information which was not truthful. There was reference in that exhibit to paying out her "ex-spouse's" interest in the property. The property which had been in their joint names was refinanced in Stephen's name alone. Stephen signed a document dated April 1, 2000 (Exhibit 35, p.3535) which was drafted by Michael

Patriquen. This document refers to Patriquen relinquishing his rights and equity in the property to Stephen and also that no support payments were to be paid by her to Patriquen. Stephen admitted that this document was false and that she lied to the bank in order to obtain the funds. Her evidence that the refinancing of the home was done because the family had bills to pay and not for the purpose of getting the equity out of the property simply does not ring true.

[139] Stephen admitted that she lied to the police in February 2000 after she had been assaulted by Patriquen during what was referred to as the McCurdy stabbing incident. She testified that she lied to the police by not telling the police that she had been assaulted or threatened by Patriquen and did so in order to protect Patriquen.

[140] Patriquen's sobriety was always an issue for Stephen. This caused considerable friction in their relationship. Stephen often argued with Patriquen about his drinking.

[141] I accept that Stephen was the victim of various incidents of violence during her marriage to Patriquen. Stephen was assaulted by Patriquen when they lived in Jamaica in the early 1980's and on one occasion there he broke her nose. He apparently then took her to a plastic surgeon and had her nose repaired. She also testified that when she was seven months pregnant Patriquen, who was high on cocaine, pulled her from the motor vehicle in which they had been driving and kicked her in the stomach. She indicated that she had been nagging Patriquen about his cocaine use. She related further incidents of violence or threatened violence such as one occasion after the birth of their first child when Patriquen chased her around their residence in Jamaica while holding a wrench in his hand. She hid in a closet. Stephen also testified that after the birth of their first child they returned to Canada and resided in St. John, New Brunswick where Patriquen also assaulted her.

[142] Prior to the McCurdy stabbing incident Patriquen assaulted her by punching her and this caused her to lose consciousness. She testified that prior to this assault Patriquen had found her in a compromising situation with one of his friends James McCurdy an employee of one of the grow operations Patriquen controlled. Patriquen was drunk at that time. The aftermath of this assault was captured on some of the intercepted communications tendered into evidence. Stephen, when questioned by the police, denied that she had been assaulted by Patriquen.

[143] After the McCurdy stabbing incident Patriquen left the country and went to Jamaica for two weeks. Patriquen returned to Canada on February 19, 2000 and Stephen saw him in a bar. He was very drunk. Later that same day the RCMP brought Patriquen home but Stephen did not want him in the house. She testified that seeing Patriquen in the custody of the police made her feel empowered, however she did not report the previous assault on her to the police. The use of this term “empowered” raises the question of the extent of Ms. Haylock’s influence on Stephen and her testimony.

[144] Although Stephen testified that there were other incidents of assaultive behaviour by Patriquen during the course of their marriage, she could not be specific as to when these occurred or under what circumstances. She indicated to Dr. Bourget, the forensic psychiatrist retained by the defence, that Patriquen slapped her, punched her, pushed her and wrestled her whenever he became upset with her or whenever he had abused alcohol or drugs. Little, if any, detail was provided to Dr. Bourget or the Court about these other incidents.

[145] Stephen, while proffering that she was a battered spouse who feared her husband, admitted to being verbally aggressive with Patriquen when he argued with her or struck her. Her evidence was “I just didn’t sit there and take it”. An example of this can be seen in the transcript of an intercepted communication dated November 14, 1999 (Exhibit 26, Tab 14) where, after being told by Patriquen to keep her “fucking mouth shut”, Stephen tells him that he is not going to speak to her like that in the house and that he should pack his bag and leave. Later on in the same conversation she tells him that she is getting him out of the house today.

[146] Stephen acknowledged, what is clearly evident from the tone of her voice and the words used, that she was being forceful when saying these things however she added that she had knots in her stomach when she was speaking these words.

[147] Stephen was not only verbally forceful and aggressive with Patriquen but at times she could also be physically aggressive as evidenced by her admission that on one occasion, June 6, 2006, before they separated, she was arrested for assault with a weapon on Patriquen. She testified that both she and Patriquen said some horrific things to each other and that she went after Patriquen physically. She pulled his hair, ripped his shirt and struck him with the grip of a pair of scissors

which she says she was holding by the pointed end. She denied causing any injuries to Patriquen during this altercation.

[148] This incident, coupled with other examples of Stephen being verbally confrontational with Patriquen, is highly relevant to her claim that she was a battered spouse and in particular that she was suffering from battered woman syndrome. It is relevant as well to her defence of duress. These incidents speak against her claim that she lived in fear of Patriquen.

[149] The tension in the Patriquen-Stephen home increased every time Patriquen drank, used drugs or was arrested and charged for drug offences. Stephen was under stress because of the concern about living in an atmosphere of police surveillance and wiretapping and her husband's substance abuse. This stress and tension however did not cause her to examine alternatives other than living with Patriquen.

[150] Stephen acknowledged that on the occasions when Patriquen was incarcerated she could have left him but did not do so. She referred to having young children and her mother's words "you make your bed, you lie in it" as the reasons for not leaving. As previously noted Patriquen was incarcerated in 1985, 1997 and 2002. All of these terms of incarceration were lengthy. Although there is no evidence concerning how long Patriquen was actually in prison, judicial notice can be taken of the fact that a federal inmate must serve at least one-sixth of his or her sentence before being eligible for parole. This would represent Patriquen being out of the home for a minimum of 14 and 12 months on two occasions.

[151] Stephen's evidence was that she first saw a psychiatrist while living in Jamaica in 1983 shortly after the birth of her first child. The psychiatric visit was shortly after Patriquen discovered that she had contacted the RCMP and advised them of her brother Douglas' involvement with drugs. This information led to an investigation which later resulted in the arrest and conviction of Patriquen for conspiracy to import narcotics and to his receiving a seven year term of imprisonment. Her evidence was that Patriquen was with her on the three occasions when she saw the psychiatrist in Jamaica and that Patriquen's complaint at the time was that Stephen cried "out of the blue", was irritable and quick with him. She could not recall any discussion of post-partum depression but only that the doctor told her that she was bipolar and gave her medication which she only took for a few days because she did not like the effects.

[152] No medical records were presented to substantiate her evidence regarding these visits or her visit with a plastic surgeon while living in Jamaica. Although no medical information was presented to support her evidence that while in Jamaica Patriquen broke her nose and then had it surgically corrected and also took her to see a psychiatrist, the lack of corroborative evidence such as hospital records is understandable given the passage of time since the event, the location of those records, the circumstances of the accused in the retention of independent counsel to represent her, the timing of that retainer, as well as the late recognition of the importance of such evidence. The lack of such evidence does not affect Stephen's credibility on this issue. I accept that Stephen was abused both physically and emotionally during the course of her marriage to Patriquen.

[153] Stephen next saw a mental health professional after Patriquen's arrest in 1992. Stephen's testimony was that Patriquen was present for all visits to this doctor. As with the previous doctor, no health records were produced either to the Court or to Dr. Bourget, the defence psychiatrist who assessed Stephen and provided expert evidence on her behalf. As well Dr. Bourget did not have the records of Dr. Lappin who was Stephen's family physician from 1989 to 2005. Stephen acknowledged that she did not attempt to obtain these records. Such records would have been very useful in supporting her claim that during the relevant period she was physically and psychologically abused in her relationship with Patriquen and that she was a battered spouse. The veracity of Stephen's evidence that she never met with any psychiatrist without Patriquen being present is, however, questionable.

[154] Stephen began seeing Ms. Haylock, a psychotherapist, in October 2006. It was her belief that the purpose of this referral was to see if she suffered from battered woman syndrome. Her evidence, which I accept on this point, was that after just a few sessions Ms. Haylock told her that she suffered from battered woman syndrome.

[155] Stephen testified that therapy with Ms. Haylock made her understand the events in her life and how the actions of other people such as her mother, father and Patriquen impacted on her. She acknowledged that she now views the negative events in her life, such as the dysfunction between herself and Patriquen, in the light of the knowledge she acquired from Ms. Haylock and her belief that she was a battered spouse.

[156] Stephen testified that during her therapy with Ms. Haylock she discussed a memory of being smothered by her mother when she was 14 months old. Stephen offered considerable details about this memory. She testified that discussing this memory with Ms. Haylock helped her understand the consequences of her mother's behaviour on her life. In light of the evidence of both doctors Bourget and Bloom regarding the formation and retention of memory it is difficult to accept and I do not accept as reliable and credible Stephen's memory of an event which allegedly occurred when she was still an infant in diapers.

[157] Stephen admitted in her evidence that during the course of her marriage she and Patriquen never separated. She was shown a note by her counsel dated September 17, 1993 (Exhibit 41A, p.195) which both she and Patriquen signed. This note was described as the financial agreement in place during their separation. Her evidence was that she did not know why this note was drafted.

[158] Another note (Exhibit 41A, p. 196) dated May 19, 1995 written by Stephen to the Bank of Montreal refers to the financial agreement in place between her and Patriquen during their separation. Stephen's explanation for these obviously false documents was that she did what Patriquen told her to do. It is clear however that Stephen's motivation was more to protect everything she had acquired, in particular their home, than because she lived in fear of what Patriquen would do to her if she did not comply with his wishes.

[159] I do not accept Stephen's evidence that she would not have refinanced the home if there had been a proceeds of crime charge against her in 2000. She stated that the house was refinanced to pay outstanding bills, a loan made by Patriquen's mother and Patriquen's upcoming legal expenses which were expected to be in the range of \$50,000.00. It is noteworthy, however, that only \$10,000.00 of the refinancing money was shown to have been paid to Patriquen's lawyer and that Stephen cashed seven bank drafts, in the amount of \$8,000.00 each, made out to her personally. She claimed that the proceeds of these cheques went to Patriquen. Despite her evidence that some money was also used to repay the Gauthier promissory note there is no evidence that this note was ever repaid with these funds. The total amount of the bank drafts was much less than the amount of the Gauthier promissory note. I do not accept Stephen's evidence on this point.

[160] Stephen testified that Patriquen was a violent individual who struck her numerous times during the course of their marriage. Very early on in their marriage when they lived in Jamaica he struck her with enough force to “shatter” her nose and on another occasion he kicked her in the stomach when she was pregnant with their first child. However, in her comments to a parole officer who prepared a community assessment report in 1997 prior to Patriquen’s release on parole, Stephen described her husband as patient, compassionate, incredibly intelligent and sincere. Stephen testified that she lied to the parole officer because she needed her husband to be home and to keep the family together. She stated “I lied because I had to do what I had to do in order to get my husband out”.

[161] I accept that Stephen’s relationship with her mother was not a happy one. The evidence of Peggy Love, Stephen’s cousin, confirms that Stephen’s mother was a person who yelled at her children and drank alcohol regularly. Ms. Love testified that Stephen’s mother would call her names such as “a black-eyed bitch” and on one occasion tried to grab the defendant’s hair. It was Ms. Love’s evidence that Stephen’s mother was always “on her case”.

[162] Expert opinion evidence was presented for the defence by Ms. Haylock and Dr. Bourget. In assessing their evidence as well as that of Dr. Bloom for the Crown I am mindful of the directions given by the Supreme Court of Canada regarding opinion evidence in *R. v. Lavalee*, [1990] S.C.J. No. 36, 1 S.C.R. 852.

[163] In *Lavalee* Justice Wilson distilled the principles set out in *R. v. Abbey*, [1982] 2 S.C.R. 24 concerning expert opinion evidence into four propositions. She stated at paragraph 66:

1. An expert opinion is admissible if relevant, even if it is based on second-hand evidence.
2. This second-hand evidence (hearsay) is admissible to show the information on which the expert opinion is based, not as evidence going to the existence of the facts on which the opinion is based.
3. Where the psychiatric evidence is comprised of hearsay evidence, the problem is the weight to be attributed to the opinion.
4. Before any weight can be given to an expert’s opinion, the facts upon which the opinion is based must be found to exist.

[164] Justice Sopinka who agreed with Justice Wilson added the following comment on expert opinion evidence which is founded on information provided by a party to the litigation. He stated as follows at paragraph 84:

Where, however, the information upon which an expert forms his or her opinion comes from the mouth of a party to the litigation, or from any other source that is inherently suspect, a court ought to require independent proof of that information. The lack of such proof will, consistent with *Abbey*, have a direct effect on the weight to be given to the opinion, perhaps to the vanishing point. But it must be recognized that it will only be very rarely that an expert's opinion is entirely based upon such information, with no independent proof of any of it. Where an expert's opinion is based in part upon suspect information and in part upon either admitted facts or facts sought to be proved, the matter is purely one of weight....

[165] Mary Haylock, Stephen's psychotherapist, was qualified to give opinion evidence regarding anger and aggression, trauma impact and recovery and domestic violence. In cross-examination during the qualification hearing Ms. Haylock indicated that she was asked to receive Stephen into a therapeutic relationship. She agreed that nothing in her report, which was not filed as an exhibit, dealt with an assessment of battered woman syndrome.

[166] Ms. Haylock referred to a therapeutic relationship as being in some ways different from a forensic relationship in that the therapeutic relationship is based on helping the patient to find their way to feeling better. There is no question that Ms. Haylock did and continues to do a lot of supportive therapy to help Stephen deal with the court process.

[167] Ms. Haylock testified that when dealing with forensic work she must be open to all facts whether they support or detract from her opinion. This statement rings hollow as Ms. Haylock never addressed statements made to her by Stephen which were inconsistent with other materials made available to Ms. Haylock.

[168] Ms. Haylock does not have a degree in counselling or a medical degree, rather she has a Master of Divinity degree. Her work experience shows that she has done counselling over many years often with woman who have been in conflict with the law. Although Ms. Haylock is not a trained doctor or counsellor, she

testified that she was able to diagnose post traumatic stress disorder and form an opinion because of her education and work experience.

[169] I am satisfied that the purpose for which Stephen was referred to Ms. Haylock by her counsel was not only to obtain therapy but also for an assessment in order to understand if there was evidence of battered woman syndrome present in Stephen's life.

[170] The therapeutic relationship began on October 18, 2006 more than six years after the charge period contained in the indictment. It was during that therapeutic relationship that Ms. Haylock did her assessment. Early on in their patient/therapist relationship Ms. Haylock told Stephen that she suffered from battered woman syndrome. Stephen believed what she was told and this belief, that she suffered from battered woman syndrome, made her view the negative events in her life in this light and believe that she was a battered woman.

[171] Ms. Haylock testified that when she began working with Stephen the goals she set in the therapeutic process were as follows: (1) to ensure Stephen's safety; (2) to see and explore options to violence; (3) to validate thoughts, feelings and choices; (4) to regain cognitive clarity and judgment; (5) to have Stephen make and trust her own decision-making process; (6) to reduce anxiety avoidance and become more emotionally responsive; (7) to establish personal and interpersonal boundaries; (8) to re-establish supportive relationships with other women, men, family and friends; (9) to broaden Stephen's world view to understand the basis of abuse from the social cultural perspective; and (10) to help her model a relationship that is based on equality. These goals are the same as the ones set out in Lenore Walker's book *The Battered Woman's Syndrome 1979 Edition*. Ms. Haylock's evidence left the distinct impression that before even beginning her therapy with Stephen she had in mind that Stephen suffered from battered woman syndrome.

[172] In dealing with issue (6) that is the lessening of anxiety and becoming more emotionally responsive, Ms. Haylock stated that there are a number of reactions of women in abusive relationships such as low self-esteem and fear. Her evidence was that if an individual does not feel loved and cherished then they move into a defensiveness and if this is ignored then it moves into anger. The anger stance, according to Ms. Haylock, is full of self-sabotaging behaviour and women in such situations become incredibly anxious, remain silent and hide their emotions. This

is, according to her evidence, what women learn in an abusive relationship. Stephen, however, did not hide her emotions or remain silent as is evidenced by both the tone and the contents of the intercepted communications introduced into evidence and her evidence that she just did not sit there and take it.

[173] It was Ms. Haylock's evidence that women who live in violence have a world view that becomes very narrow because they are focussed on survival.

[174] According to Ms. Haylock Stephen's history put her in a position where she attached herself to an abuser in her first serious relationship because that is what she knew. The history of violence which Ms. Haylock obtained was gathered over a period of time and based solely on self-reporting by Stephen. Ms. Haylock did not attempt to confirm anything told to her by Stephen.

[175] Ms. Haylock stated that she reviewed a lot of documentation apart from what Stephen had told her. Some of the information in the affidavits she reviewed was contrary to what Stephen told her but she was not surprised by this. She did not, however, explore with Stephen the contradictory information available to her.

[176] It was obvious that Ms. Haylock viewed herself not only as Stephen's therapist but also at times as her advocate. She stated: "I'm not only the objective assessor, I'm also the woman's therapist". I accept, based on the evidence of both doctors Bourget and Bloom, that an assessor's role is to be critical and provide an independent opinion and not simply accept at face value what the assessor has been told. In the present case it cannot be concluded that Ms. Haylock was an objective assessor. Her evidence must be viewed as coming from an advocate and not from an objective witness.

[177] Ms. Haylock testified that she read the documents provided to her to gain a larger picture of what was going on. She acknowledged that she was looking specifically for the cycle of violence in the history of Stephen's relationship with Patriquen. Although she testified that she addressed what appeared to be inconsistencies between the documents and the dialogue, I am satisfied that Ms. Haylock simply accepted at face value everything Stephen told her.

[178] Ms. Haylock described the cycle of violence, as outlined by Walker in her text *The Battered Woman Syndrome*, as having three phases. The first is the tension building phase where the woman sees little cues in her partner's behaviour

that may lead to violence. The second phase is described as the acute phase where there is an incident of violence and the third phase is the honeymoon or contrition phase which she referred to as a cooling down period. According to Ms. Haylock the contrition phase can last for any period of time presumably even years and then the tension begins to build again.

[179] Ms. Haylock received audio and transcribed versions of the intercepted communications. She did not, however, listen to the intercepts, but only read the transcripts to see what was going on in the house and how things were said. Based on her reading of these intercepted communications it was her opinion that there was always a lot of tension in the house and she felt that Stephen was in a “survival mode” because she acquiesced to things that were going on.

[180] Ms. Haylock testified that as a therapist she must be careful not to criticize behaviour but to understand it. In her review of the materials provided she looked for things that Stephen did to placate her abuser. According to Ms. Haylock Stephen was trying to keep things running well and was using self-deprecating language. Ms. Haylock’s testimony was that Stephen’s sense of positive self-regard was non-existent and that this had been so from the time Stephen was age two or three. Ms. Haylock’s evidence on this point was again based purely on the self-reporting provided by Stephen.

[181] Ms. Haylock testified that in her review of the intercepted communication where Stephen and Patriquen were discussing his drug business she concluded that Stephen would broach the subject and then back away. According to Ms. Haylock this was because Stephen was in survival mode. It is, however, difficult to see where Stephen was backing away when she, during that intercepted conversation, was telling Patriquen that he should fire some of the people he had working for him and that others were not trustworthy. It is also difficult to accept that Stephen was backing away or being non-confrontational when she referred to Patriquen as a “two-bit criminal” in one of those intercepted communications.

[182] Ms. Haylock’s evidence was that a battered woman does not leave an abusive relationship because of (1) fear, that is because a traumatic bond is established and the woman knows she is trapped; (2) for economic reasons such as who will take care of her and the children; (3) to protect the children; and (4) because of shame, that is not wanting others to see that she could not maintain a relationship.

[183] According to Ms. Haylock if a woman is punched once then fear is created and if the woman stays then she is trapped. She referred to this as an anxious attachment bond which is created. She also used the term a traumatic bond for this attachment.

[184] Ms. Haylock's evidence was that the entire relationship between Stephen and Patriquen was violent physically, verbally, emotionally, sexually, financially and environmentally. By environmentally she meant having people around that the partner does not want. I accept that the relationship at times was physically, verbally and emotionally abusive, however a finding of sexual, environmental and financial abuse was not supported by the evidence.

[185] Ms. Haylock testified that she remembered a conversation from the intercepts where Patriquen broke Stephen's nose and then said he would take care of her. Her evidence on this point was obviously wrong because this came from Stephen's self-reporting and not the intercepted communications. The intercepted communication to which Ms. Haylock must have been referring was the one where Stephen was speaking to Mr. McCurdy and referring to Patriquen having broken her nose in the past. This is but one example of the lack of reliability of Ms. Haylock's evidence and why it cannot be accepted as an independent and impartial description of Stephen.

[186] Ms. Haylock found financial violence in the household because, according to her, the finances in the household were always mysterious. It was Ms. Haylock's opinion that withholding information about finances is economic or financial abuse. It is difficult to understand how Ms. Haylock could say that finances in the home were a mystery since Stephen knew that her husband made his living through illegitimate means and that his illicit income was what paid the mortgage and other large expenditures. This is but another example of Ms. Haylock accepting at face value what Stephen told her.

[187] Ms. Haylock testified that in 2006 Stephen confronted Patriquen about being a criminal but that before this time she was just suspicious and was walking around that issue. This is clearly wrong since Stephen knew long before 2006 that Patriquen was a criminal. In fact she knew as far back as the early 1980's that he made his living as a drug dealer. This evidence calls into question what Stephen

told Ms. Haylock and highlights the fact that Ms. Haylock did not challenge Stephen on anything she reported to her.

[188] According to Ms. Haylock, during the periods when Patriquen was incarcerated Stephen did not leave the relationship because the hyper-arousal/hyper-vigilance phase of the battered woman syndrome was not going away. Ms. Haylock believed that Stephen was in this state because Stephen would not know what would happen to her when Patriquen got out of jail. It was Ms. Haylock's opinion that because of the enormity of the violence that Stephen had already experienced at the hands of Patriquen she believed that Patriquen had the power to carry out his threats. Since no evidence was presented concerning Patriquen threatening Stephen before going to jail or threatening her while he was incarcerated, it is assumed therefore that Ms. Haylock was relying on what Stephen told her.

[189] According to Ms. Haylock domestic violence is violence which is perpetrated by an intimate partner and this leads to post traumatic stress disorder. If the post traumatic stress is not dealt with over time, it accumulates to become the battered woman syndrome. I accept Ms. Haylock's evidence that lying to the police is not uncommon in abusive domestic violence situations because the victim will recant in order to protect herself, but I do not accept that this was the reason Stephen lied to the police or the parole authorities.

[190] Ms. Haylock testified that a traumatic bond can be established through only two acts of violence which create fear and terror. These acts create an attachment and the woman then feels trapped and is unable to escape. It was Ms. Haylock's opinion that the benefits Stephen obtained from Patriquen such as jewellery and trips may have served to keep Stephen in the relationship. According to Ms. Haylock these benefits would fit into the contrition phase of the cycle of violence.

[191] Ms. Haylock believed that Stephen was accurately naming her experiences and feelings. Ms. Haylock believed what Stephen told her and accepted it as the truth. She never met with Patriquen or the children. The only information she gained about the family context was what she read and what Stephen told her. No attempt was made to meet with any of Stephen's family members such as her brother, cousin or other relatives.

[192] Ms. Haylock approached her therapy with Stephen in accordance with Lenore Walker's text *Battered Woman's Syndrome* that is by believing what her client told her. It is difficult to accept that, in making the links between what Stephen told her and the characteristics of battered woman syndrome, Ms. Haylock relied not only on what Stephen told her but also on the documentation which she says she reviewed.

[193] Ms. Haylock agreed that if violence is present but it is not in a cyclical pattern then there is abuse but not a cycle of violence. According to Ms. Haylock a woman caught up in battered woman syndrome would not bring up things that would be upsetting to her abusive partner, not initiate disagreements, not challenge the partner especially in front of his friends and would usually be compliant. The woman would feel that she was being controlled and one would not expect to see much independence.

[194] Stephen was independent in her business life and was able to function quite successfully outside the home. Ms. Haylock agreed that the battered women described by Walker in her texts usually did not have independence outside the home. Stephen, according to her evidence, would bring up with Patriquen his alcohol abuse, his illicit activities and her dislike of these things and some of his friends as well. She also raised these dislikes with the various doctors she saw and said that Patriquen was always with her at those appointments. As well, the intercepted communications tendered as evidence establish that Stephen did raise things with Patriquen that were upsetting, she did argue with him and she also challenged him in the presence of his friends. Stephen cannot be said to have been a shrinking violet.

[195] Ms. Haylock described a battered woman's abusive partner as usually being someone who was possessive and jealous and that it would be normal to see a woman whose everyday activities were impinged by the partner's jealousy and possessiveness. The evidence shows that Stephen was a successful sales person whose employment caused her to be away from her home for weeks at a time. She travelled at least two weeks of every month and in the later years of her employment with Triple-C-Inc. she was away from home three weeks of every month. She stayed in hotels during these business trips. There is no evidence before the Court indicating that Patriquen was concerned about Stephen being away from him that often and for such extended periods or that he repeatedly questioned her about who she had seen or what she had done while away from the

home. Stephen's evidence that Patriquen was very possessive is not substantiated nor is it accepted.

[196] Ms. Haylock agreed that the fact that Stephen and Patriquen swore at each other was not necessarily a sign of abuse because some people speak to each other that way. Ms. Haylock noted reciprocal verbal and foul language between them and agreed that this was not necessarily a sign of a battered woman. Ms. Love's evidence supports a finding that Stephen and Patriquen spoke to each other, even in the presence of others, in a way that was offensive and abusive.

[197] Ms. Haylock referred to jealousy and rage as being part of the psychological violence. She acknowledged that Patriquen, in stabbing McCurdy, did not necessarily have to be a batterer to do this because he did find his wife with another man in a compromising situation. Ms. Haylock agreed that if there was no evidence of tension building preceding the stabbing, then she would view the stabbing as an isolated act of violence.

[198] Ms. Haylock confirmed that for the cycle of violence to be present all parts of that cycle must be present, that is the tension building phase, the acute phase and the contrition phase. According to Ms. Haylock the tension building phase can go on for two or three months, but then it culminates with an assault and is followed by the contrition phase.

[199] Ms. Haylock could not recall telling Stephen that she suffered from battered woman syndrome but she did recall telling her that she suffered from post traumatic stress disorder and Stephen expressed a sense of relief knowing that she suffered from this since it helped to explain a lot of the thoughts and feelings that she had. It also allowed her to "look back at her life differently". I accept Stephen's evidence that not only did Ms. Haylock tell her she suffered from post traumatic stress disorder but also that she was a battered woman who suffered from battered woman syndrome.

[200] Ms. Haylock agreed that Stephen could present herself in an upbeat manner, had a forceful presence and an ability to make herself heard. She possessed all the traits of a good salesperson. According to Ms. Haylock the fact that Stephen when at work lived independently of Patriquen was simply an example of Stephen's ability to compartmentalize things.

[201] Ms. Haylock acknowledged that if the batterer was jailed this could be a way for the abused woman to get out of the relationship. She, however, was of the opinion that if there was a separation due to the incarceration of the abuser it would not be inconsistent with the woman being caught up in the cycle of violence because there would still be an anxious attachment present.

[202] Ms. Haylock admitted that unhappiness in a marriage does not equate with battered woman syndrome and physical abuse alone does not equate with battered woman syndrome. I accept her evidence on this point.

[203] Ms. Haylock agreed with Lenore Walker's finding that a characteristic of battered woman syndrome is that the violence always increases in seriousness and nature over time. She accepted that in situations where battered woman syndrome is present there is a constant and escalating use of violence and that the weaponry used in battering also escalates.

[204] According to Ms. Haylock hyper-arousal means that the women is always on guard. Her evidence was that hyper-arousal is always present because the partner is always around. She also agreed that the hyper-arousal would decrease if the partner was away on a trip, although Ms. Haylock was of the view that the length of the departure would not mean a greater decrease in the hyper-arousal.

[205] It was obvious that Ms. Haylock developed empathy for Stephen in part because of what she perceived Stephen had endured. She also accepted as truthful everything Stephen told her.

[206] Ms. Haylock was not an objective assessor, nor was she an objective witness. It was evident that from the outset her relationship with Stephen was premised on accepting as truthful anything Stephen told her. She did not, perhaps because of the therapeutic nature of the relationship, attempt to confront Stephen with inconsistencies between what she was told by Stephen and what was contained in the collateral information which she said she reviewed.

[207] Ms. Haylock's goal from the onset was to validate Stephen's thoughts, feelings and choices as well as to understand the basis of the abuse from her perspective. Ms. Haylock did not discuss in any meaningful fashion what Stephen knew about her husband's illegal activities nor did she address the issue of why Stephen remained in the relationship even when Patriquen was incarcerated

numerous times for lengthy periods. She did not deal with the question of a de-escalation of violence between 1982 and 2000. Ms. Haylock was told about incidents of violence and determined that because there were two or more such incidents that therefore a cycle of violence as defined by Lenore Walker was present. It would appear that she did not reconcile Stephen's behaviour and words as contained in the intercepted communications, such as initiating disagreements, confronting her abuser in the presence of his friends, discussing his business arrangements and choice of employees, with her opinion that a battered woman would be compliant and reticent to instigate something which would lead to violence. I attach, for the foregoing reasons, little weight to the evidence of Ms. Haylock.

[208] Dr. Bourget, a forensic psychiatrist, retained by the defence was qualified as a forensic psychiatrist and offered opinion evidence. She prepared a report marked as Exhibit 71. Dr. Bourget met with Stephen once for five hours on January 19, 2007, almost three months after Stephen had started her therapy with Ms. Haylock.

[209] Dr. Bourget testified that battered woman syndrome is an expression used to refer to woman who live in very abusive homes and are subjected to violence. She indicated that it is not included in the DSM IV as a major psychiatric illness under either Axis I or Axis II, but it is categorized under Axis IV which refers to psychosocial stressors.

[210] According to Dr. Bourget Stephen's difficulties appeared to arise from psycho-social stressors such as her husband's drinking and drug use and that her mood swings were more attributable to difficulties in her personal life.

[211] Dr. Bourget related that a number of theories exist as to why women stay in abusive relationships. She gave as examples of these theories the theory of Lenore Walker's cycle of violence and the theory of learned helplessness which according to Dr. Bourget are different concepts.

[212] Dr. Bourget defined the cycle of violence as having three phases. A tension building phase where people become more irritable, then in an acute phase where there is a physical act of violence which is then followed by a contrition phase where the abuser expresses remorse. It was Dr. Bourget's opinion, however, that the acute phase could also be found if there was emotional violence instead of

physical violence. It was her opinion that not all cases follow this pattern but a high number of them do.

[213] According to Dr. Bourget learned helplessness is based on a cognitive model. Some people learn that they are helpless because something has happened to them that so traumatizes them that they develop dysfunctional thinking in which they see themselves as having no real options or solutions to escape a situation.

[214] In reviewing the documentation provided to her by Stephen's counsel Dr. Bourget noted that a number of psychiatrists concurred that Stephen was under a lot of stress and used alcohol as a means of dealing with it.

[215] In considering what weight should be attached to Dr. Bourget's ultimate opinion it is important to note that when assessing the background information given to her by Stephen, Dr. Bourget was not able to corroborate all of the specific statements made by Stephen. She testified that she looked for other information that was either consistent or inconsistent with what Stephen had told her, however some of the information provided by Stephen she could not link to other sources.

[216] In her report (Exhibit 71) at p.18 Dr. Bourget referred to Stephen as having a distorted cognitive view of her circumstances in that she knew her marital life was not the best, however she did not appear to be able to appreciate the extent of that and she was blinding herself. Dr. Bourget testified that on an emotional level Stephen was not able to appreciate the extent of the abuse. She acknowledged that this was based on what Stephen had told her. According to Dr. Bourget the inability to appreciate the extent of the abuse is something that is often seen in woman who stay in abusive relationships.

[217] Dr. Bourget did not see having a successful professional life as inconsistent with being in an abusive relationship. Dr. Bourget concluded at p.19 of her report that within the scope of things under her control Stephen managed to the best of her abilities to keep the family together and care for her children when her husband was away either on a trip or while incarcerated. She acknowledged that this conclusion in her report came from what Stephen had told her. Dr. Bourget testified that Stephen not leaving the relationship when her husband was away was not inconsistent with battered woman syndrome because an abused woman has a distorted view of things and a fear of doing something wrong that could affect her children.

[218] Dr. Bourget opined that it was not realistic to expect that Stephen could have left the marriage. This opinion was again based on her understanding of what Stephen told her.

[219] Dr. Bourget concluded that Stephen was blinding herself to Patriquen's activities and their extent and Stephen had convinced herself that it was not as bad as it was. It was Dr. Bourget's opinion that Stephen shared many clinical features with battered woman syndrome. She based this opinion on what she read in the literature on battered woman syndrome and what Stephen told her about things such as her background, coming from a dysfunctional family, being subjected to violent acts from her partner, arguments, screaming, name-calling and reported self-esteem problems.

[220] Dr. Bourget stated that Stephen felt powerless and did not show any capacity to terminate the abusive relationship on her own. She gave a tentative opinion that Stephen could present with learned helplessness. She arrived at this opinion based on some of the things told to her by Stephen. According to Dr. Bourget Stephen felt it important to keep the family together and that it was her duty as a wife and mother to do so.

[221] Dr. Bourget reported that there were early episodes of violence in Stephen's relationship with Patriquen which began in Jamaica and it seemed to her that over the years the violence continued. She again acknowledged that she only had Stephen's self-reporting about the violence over the years.

[222] Dr. Bourget admitted that her opinion rested in large part on Stephen's self-reporting. She testified that there were other things that she considered but she did not explain what those were other than to say that the intercepted communications contained in Exhibit 26 were useful in corroborating the verbal abuse between Stephen and Patriquen. Her opinion with respect to the pattern of violence was based solely on Stephen's account of what occurred.

[223] Dr. Bourget acknowledged that in her role as an assessor it was important to provide a critical analysis and not to take things at face value. She agreed with the proposition that an assessor cannot ignore inconsistencies and if there are inconsistencies the assessor must address them in order to be able to provide an independent opinion.

[224] Dr. Bourget conducted no collateral interviews. It was her evidence that, in cases such as this, forensic psychiatrists would not consider it appropriate to interview other family members.

[225] Battered woman syndrome is not a diagnosis which can be made under DSM IV since it is not something that is recognized in psychiatry. Dr. Bourget quoted Walker's book *The Battered Woman Syndrome* in her report. She considered Walker's cycle of violence in forming her opinion that Stephen could not leave the relationship. Dr. Bourget stated that the essence of the cycle of violence is its cyclical nature. She acknowledged that Walker concluded that in most cases violence increased over time as did the use of a weapon and the abuser's controlling behaviour. She agreed that in Walker's model violence did not simply stop nor was there a de-escalation of the violence. Although Walker's text indicates that in battered woman syndrome cases violence increases over time, Dr. Bourget did not think that that was essential.

[226] Based on the information she had available to her about Stephen, Dr. Bourget found that no absolute diagnostic criteria for battered woman syndrome could be made in this case, only that Stephen shared a number of characteristics with battered woman syndrome.

[227] She accepted that according to Walker's study of battered women a woman who suffers from battered woman syndrome is not usually confrontational with her batterer.

[228] Contrary to Ms. Haylock's view Dr. Bourget did not think it was appropriate to diagnose post traumatic stress disorder in Stephen's case. Her evidence was that the trauma required for post traumatic stress disorder needs to be a serious trauma or a very intense or severe episode. She did not have sufficient information to conclude that a diagnosis of post traumatic stress disorder applied in this case. When Dr. Bourget interviewed Stephen she noted no evidence to indicate that Stephen had developed post traumatic stress disorder.

[229] In the final paragraph of her report Dr. Bourget quoted Lenore Walker's text *The Battered Woman Syndrome* to provide an example of why Stephen could not leave the relationship. Her evidence was that she did not do this in order to give the reader of the report the impression that Stephen fit Walker's description of

someone suffering from battered woman syndrome. Her evidence was that she referred to Walker's text in order to provide a few examples to support her opinion of why women do not leave abusive relationships. It appeared to her that Stephen did not have the capacity to leave the relationship based on the circumstances of her history as she gave it to Dr. Bourget and other information such as the intercepted communications.

[230] Dr. Bourget did not believe that psychological testing would have been of assistance to her and therefore did not ask that any such testing be conducted.

[231] Dr. Bourget reviewed Stephen's previous medical records. Her understanding was that all of the "available" records were sent to her and she worked with what she had. Dr. Thangaroopan, one of the doctors who had seen Stephen in the past, identified certain issues such as Patriquen's drinking, his drug use and arrest and the impact of that on the children as being stressful for Stephen. Dr. Bourget referred to these as psycho-social stressors which were present in 1993 when Stephen saw Dr. Thangaroopan.

[232] She reviewed a report prepared in 1997 by Dr. McCormick at the Nova Scotia Hospital. In that report Dr. McCormick asked Stephen to describe any physical, emotional or sexual abuse that she had suffered. Stephen told Dr. McCormick about being physically abused by her mother, but said nothing with respect to Patriquen abusing her. Dr. Bourget did not ask Stephen about this inconsistency between what she had told Dr. McCormick and what she was telling her. It is significant as well that Stephen did not in her testimony indicate that she had lied to the doctors she saw.

[233] Dr. Bourget admitted that a dysfunctional marriage did not equate with battered woman syndrome.

[234] She also reviewed a report prepared in 2001 when Stephen saw Dr. O'Neil. Stephen identified for Dr. O'Neil some psycho-social stressors such as her job loss, her troubles with Revenue Canada and her anger at Patriquen which was to the point where she was not sleeping with him, as things which were affecting her. Dr. O'Neil's notes contained no specific mention of spousal abuse. Again Dr. Bourget did not ask Stephen why there was no reference in Dr. O'Neil's notes about being physically assaulted by Patriquen.

[235] Dr. Bourget was also referred to notes of Dr. Bhaskara who saw Stephen in 2006. Dr. Bourget acknowledged that those notes indicated that Stephen was still battling with Patriquen's drinking which appeared to be a constant in their marriage. There was also reference in Dr. Bhaskara's notes regarding the issue of Stephen spending too much money. Although Dr. Bourget discussed the question of Stephen's spending during her interview with her, she testified that nothing came of that discussion. Stephen admitted to Dr. Bourget that she had spent money over the years but felt that it was justified. Dr. Bourget, knowing that Stephen had been charged with possessing and laundering proceeds of crime, did not question Stephen about the allegations that were being brought against her nor did she inquire about how Stephen felt about this. She did not ask about the reasons why Stephen remained in a home where illegal activity and the proceeds of illegal activity was a constant.

[236] The April 13, 2006 notes of Dr. Bhaskara and his assistant Ms. Gavin identified two psycho-social stressors as impacting on Stephen. One was her upcoming trial on the present charges and the second was the escalating marital problems over the past two years. Stephen told Dr. Bhaskara that Patriquen was physically assaultive toward her but she described it as a two-way street. Although Dr. Bourget testified that this comment was put to Stephen in her interview with her, Dr. Bourget did not have an answer to this question. She testified that it would have been nice to have this information but it raised no further questions for her. She did not comment on this in her report.

[237] Dr. Bourget agreed that in a case such as this the records of the family physician would be important for her to review. She did not get the records of doctors Lappin and Rasiah both of whom had been Stephen's physicians. Dr. Bourget acknowledged that nothing in the medical reports which she reviewed indicated anything about physical violence save for Dr. Bhaskara's notes made in 2006.

[238] Dr. Bourget agreed with the suggestion that one should not be both an assessor and a therapist. She also agreed that a therapist has to be careful not to tell the patient what their problem is if the therapist is to testify in court since that may affect how the patient presents in court.

[239] Dr. Bourget was told by Stephen about acts of violence that Patriquen had inflicted on her. The Jamaica incident which occurred in 1982 or 1983 was one

which Stephen described in detail to Dr. Bourget. Dr. Bourget did not, however, elicit information that led her to conclude that this incident was part of a cycle of violence. She was uncertain that this incident would fit within the theory of the cycle of violence.

[240] Dr. Bourget agreed that, other than the two incidents of reported violence in Jamaica, the other incidents reported to her were of a low-level kind such as pushing and shoving and these occurred when Patriquen was drinking. She acknowledged that there would be an association between violence and the use of alcohol.

[241] It was Dr. Bourget's opinion, based on everything she read and heard, that Stephen was a victim of domestic violence. The McCurdy incident where Patriquen punched Stephen was another incident of domestic violence, however, Dr. Bourget agreed that the fact that Patriquen was drunk and found his wife with his best friend in compromising circumstances might explain why the abuse occurred on that occasion. What was crucial to Dr. Bourget's opinion was the history of verbal, emotional, and physical abuse and some of the corroborative evidence she could glean from the intercepts. This corroborative evidence was for the most part in the form of verbal and emotional abuse. The physical abuse was based on Stephen's self-reporting.

[242] Dr. Bourget testified that learned helplessness or traumatic bonding are concepts which are used to explain why women do not leave abusive relationships. These women have lost the willful capacity to leave the relationship and have usually been subjected to financial controls. At times other controls, such as access to a vehicle or leaving the home to do things that they want to do, are used as methods of controlling the woman. In the present case Stephen had her own finances and it would appear that she was free to come and go as she wished.

[243] Dr. Bourget agreed that if Stephen was told that being viewed as someone who suffered from battered woman syndrome was good for her defence and that during her therapy the therapist told her that in fact she had battered woman syndrome, there might be a possibility that Stephen would view things differently because of this.

[244] Dr. Bourget did not put any weight on Stephen's recollection of being smothered by her mother when she was an infant. It was Dr. Bourget's opinion

that it is quite unlikely that a person can have such a memory of an event which occurred at such an early age. She did not believe that any weight could be attached to this because it was such an early memory.

[245] Stephen told Dr. Bourget about a memory which came to her during the course of her therapy and this memory had to do with her father. Stephen's evidence, however, was that this memory (of being sexually interfered with or abused by her father) came to her much earlier in time. In fact this alleged memory was something that, according to Stephen's evidence, Patriquen held over her and reminded her of during their relationship. Dr. Bourget would not attach much weight to that alleged recovered memory.

[246] Dr. Bourget agreed that living with a drug dealer, getting caught, worrying about surveillance, waiting for trials and going to jail are all stressors. She acknowledged that Patriquen's drinking would also drive up the stress in Stephen's life as would worrying about the impact of these things on her children. She opined that a combination of all these things might explain why at times Stephen required medical attention.

[247] Dr. Bourget admitted that she did not have as much information about the details of the offences as she would have liked. She agreed that it is important for a doctor who is acting as an assessor to know what the accused has done regarding the offences charged in order to be able to provide an opinion.

[248] Although Dr. Bourget had and testified that she reviewed Ms. Shea's financial analysis report she never discussed it with Stephen. According to Dr. Bourget Stephen told her that because she had her own income she did not feel that she could or should be implicated in the charges against Patriquen. Dr. Bourget spoke with Stephen about Patriquen's drug money and concluded that this was something which Stephen was rather indifferent about. Dr. Bourget did not discuss with Stephen what the drug money was used for. Stephen told her it was not her doing where the money came from and the source of the money did not trouble her. This is another of the many examples where Dr. Bourget chose not to confront Stephen on statements made by her. It is also evidence of Stephen's willful blindness.

[249] Dr. Bourget understood that Stephen and Patriquen often argued over money, however, her opinion was that this was not inconsistent with the dynamics

of battered woman syndrome. Dr. Bourget's focus regarding consistency in the battered woman syndrome was that women remain in abusive relationships. She was also of the opinion that instigating verbal arguments and participating in verbal abuse was not inconsistent with battered woman syndrome. She stated that passivity is something that can be seen but is not necessarily expected in battered women. According to Dr. Bourget the cause of an abused woman not leaving an abusive relationship is because the woman's capacity to leave has been removed by the abuse. Dr. Bourget did not discuss with Stephen in any meaningful way why she remained in this relationship.

[250] The fact that Stephen was away from her home for weeks at a time due to her work was not something which Dr. Bourget discussed with Stephen. She opined that physical separation would not cause the emotional or psychological attachment to be reduced. Her opinion on this point came however without any exploration of the issue with Stephen.

[251] Dr. Bourget agreed that it was only as a result of Stephen's therapeutic sessions with Ms. Haylock that Stephen realized she was not happy in the marriage. Dr. Bourget noted in her report that Stephen never considered separation or divorce. According to Dr. Bourget Stephen would rather put up with the abuse than break up her family. Dr. Bourget agreed with the suggestion that this was indicative of a choice process being present. She, however, qualified her answer by saying that she could not say whether it reflected Stephen's thinking at the time or her thinking now as a result of having received therapy.

[252] Dr. Bourget did not discuss with Stephen her separation from Patriquen brought about by his various terms of incarceration. Her report contains nothing regarding any opportunities Stephen may have had to leave the relationship because Stephen told her that it was not something she had considered at the time. Dr. Bourget chose not to pursue this with Stephen even though she was aware that duress was being advanced as a defence. She was however of the opinion that physical separation would not have overcome the emotional attachment between the two.

[253] Dr. Bourget was forthright in acknowledging that what Stephen reported to her including the physical abuse could well have been coloured by what she learned in therapy. It is noteworthy that Stephen never indicated she was being

physically abused to any of the medical professionals she visited over the years and was never questioned by Dr. Bourget about her reasons for not disclosing.

[254] Although Dr. Bourget was of the opinion that Stephen did not have the capacity to leave the marriage she could not say when that incapacity began. She did not discuss with Stephen if she and Patriquen had ever separated.

[255] In her report Dr. Bourget quoted Lenore Walker's text *The Battered Woman Syndrome* and in particular a passage indicating that the behaviour of women in abusive relationships "varies directly with what they perceive will be effective in minimizing injuries and staying alive". Although she cited this in her report Dr. Bourget was unable to provide any examples of Stephen varying her behaviour to minimize injuries and stay alive because she did not discuss this with Stephen.

[256] Dr. Bourget agreed that not all battered women develop battered woman syndrome and that there are battered women who do not present with battered woman syndrome but remain in their abusive relationships. Dr. Bourget acknowledged that being battered does not equate with an inability to function, to go to work, to shop, to care for children and to participate in activities and run the household. Dr. Bourget agreed that battering does not subsume every aspect of a woman's life and does not mean that the woman cannot make conscious choices about certain things, including possessing proceeds of crime.

[257] On the whole Dr. Bourget's evidence was not impressive. She accepted at face value what Stephen told her. She did not question or confront Stephen about any inconsistencies between what Stephen told her and what was contained in the materials she reviewed nor did she seek out information other than what was provided to her. Although she referred to Lenore Walker's text *The Battered Woman Syndrome* in her report, whenever inconsistencies between what Stephen did and what Lenore Walker noted in her text, Dr. Bourget would simply skirt the issue by saying that Walker's text was not the only source of reference she used. Dr. Bourget was unable to conclude that Stephen suffered from battered woman syndrome. The fact that she did not address with Stephen the circumstances surrounding the commission of the alleged offences affects the weight which can be given to her evidence. I agree with Dr. Bloom's comment that Dr. Bourget did not link the psychiatric issues with the legal issues. The weight to be given to Dr. Bourget's evidence is greatly diminished because of her failure to address the relevant issues with Stephen and the reliance on Stephen's self-reporting.

[258] Dr. Hy Bloom was called in rebuttal by the prosecution. He was qualified as an expert entitled to give opinion evidence in forensic psychiatry. The mainstay of his practice is evaluating people for mental/legal matters. Dr. Bloom did not provide an opinion or diagnosis regarding the accused. He was unable to do so because he did not have the benefit of interviewing Stephen. His evidence dealt mainly with how a proper forensic psychiatric assessment should be done. He also addressed, in general terms, the concept of battered woman syndrome and its components.

[259] Dr. Bloom outlined the following as what he would do when performing a forensic assessment. (1) He would ask counsel to provide documents that are required for court and ask the client to sign consent forms so that he could obtain more information if necessary such as family physician's records; (2) He would perform a clinical interview starting with historical information, family background, employment, marital history, mental and medical history and then do a psychiatric history. He would see a patient two or three times since one or two hour interviews are not sufficient. One meeting, according to Dr. Bloom, simply captures a moment in time; (3) He would ask for access to other people such as a spouse, employer or friend who have known the subject of the assessment for a long time in order to get a perspective of the person before and after the relevant period; (4) On occasion he would ask for lab testing such as psychological testing to confirm the authenticity of the information given. This would be done if he had concerns about discrepancies between what he had reviewed and what the patient told him. (5) He would then take the information he had and prepare an assessment under the DSM IV, and (6) He would apply the psychiatric assessment to the legal issues at play.

[260] He reviewed both Dr. Bourget and Ms. Haylock's reports. He noted that some documents, for example medical reports, were not available to Dr. Bourget. He referred to the importance of obtaining the patient's past medical reports because those reports might capture discussions the patient had with his or her family physician as well as the doctor's observations of the person, since the family doctor might note physical or psychological things that were disclosed or not disclosed by the patient. Dr. Bloom testified that he always asks for such reports and if he does not receive them then he notes that in the report since it may compromise his opinion.

[261] His practice is to review the documents before meeting with the patient because there may be critical information in the documents that should be explored with the subject.

[262] He would have asked to speak with Patriquen and the children, as well as the family doctor and employer and friends. For example, he would have asked Patriquen about the allegations of abuse and whether or not Patriquen accepted or refuted them. He would want Patriquen's perspective on things so that he could understand the accused better and see if there were any psychological issues at play. He did not know how comfortable he would have been with what Patriquen and the children said but he would have asked. He would have wanted more information about the accused's functioning from the perspective of other persons.

[263] He testified that he probably would have used psychological assessments since the portrayal of abuse by Stephen was a recent occurrence and not one contained in the older records he reviewed. He would question whether this perspective was being advanced to support the legal defence and would have used tests to assess the authenticity of her allegations.

[264] The role of a forensic psychiatrist conducting a forensic assessment is different than that of a therapeutic psychiatrist. Dr. Bloom described the difference between therapeutic and assessment roles as follows: In the therapeutic role the psychiatrist's function is to establish a relationship with the patient. As a therapist the psychiatrist works at the behest of the patient and no one else and many therapists resist being called as a witness to a case since it may compromise their therapeutic relationship. The psychiatrist as assessor, on the other hand, is at arms length, does not do the patient's bidding and does not engage in a therapeutic relationship. The therapist generally accepts information at face value while the assessor does not do that and would go astray if he or she did accept information at face value. The therapist does not go outside the information provided by the patient to check it out, whereas the assessor does. The assessor's role is to provide an opinion and not to do counselling.

[265] He described battered women syndrome as a construct devised by Lenore Walker which sets out what happens to women who stay in long term abusive relationships. The core of battered women syndrome is its cyclical nature.

[266] His evidence was that learned helplessness in battered women syndrome results after years of dealing with a menacing character who abuses the woman to the point where the woman finds no impasse and simply gives up. Techniques are used by the woman to survive such as placating the abuser and being nice to him. According to Dr. Bloom there is a threshold issue with learned helplessness which is that things have to be of a certain magnitude before controls are lost. In other words a condition has to be of a certain intensity before it causes impairment to such a degree that a loss of control of freewill or capacity to decide occurs. The abuse, according to Dr. Bloom, has to be severe before it leads to such an impairment. It is not simply that the abuse must be of a certain level but it has to cause symptomology to such a degree that there is an impairment.

[267] As an assessor addressing the issue of learned helplessness he would ask about how and when the abuse occurred, what happened before and after the abuse, what did the woman do after, how did she react, how did it affect her in the days and months after. He suggested that in the present case a line of questions regarding how the abuse affected Stephen, her income, her spending and what she thought about it would have been required. This discussion would be meant to reveal whether the abuse caused any limitation in the person's moral grounding or overpowered the woman's sensibilities. Dr. Bloom commented that in the present case Dr. Bourget's report contained no information about this or that it was ever discussed by Dr. Bourget with Stephen. He would have questioned Stephen about significant abuse over a protracted period of time and whether it was in a manner that left her confused about things such as whether the abuser would change. He would have wanted to know about Stephen's independent decision making such as financial decisions.

[268] Dr. Bloom pictured a woman suffering from battered woman syndrome as a woman who was controlled in a number of ways by her abuser. For example, the woman would not be able to see who she wanted to see. She could not control her own finances, and she would not buy expensive things without the abuser's approval. Everything that the woman did would have to be approved by her abusive partner. Dr. Bloom opined that a woman who travels around and does as she pleases, who makes her own decisions, has an independent life and has control over her work and money may be abused but does not have battered woman syndrome.

[269] He would expect to see a lack of autonomy in a woman with battered woman syndrome. The fact that Stephen had a job and put money into her bank account did not fit in with the lack of autonomy he would have expected. Dr. Bloom would have discussed and explored this issue with her eliciting information about whether she had a free reign over her bank account and purchases, whether there was any violence by Patriquen if she bought things without his approval, as well as, Patriquen's attitude about her having a job that took her away from the home for extended periods. He would have expected to see financial controls such as the abuser being given the pay cheque and putting it into an account that he controlled. The apparent degree of latitude that Stephen had was not one that he would have expected to see in a controlling relationship.

[270] According to Dr. Bloom possessiveness is an important dynamic in battered woman syndrome. Generally a woman who has battered woman syndrome is abused by someone who is also very possessive. Dr. Bloom would not accept at face value a conclusory statement that Patriquen was possessive. He would have asked more questions to determine what would trigger the possessiveness.

[271] Dr. Bloom referred to jealousy as being one of the characteristics of an abuser. Since jealousy is an important factor in understanding battered woman syndrome he would have asked questions about this.

[272] Dr. Bloom noted that subservience is part of learned helplessness which the abused woman uses as a strategy to cope with the abuse. He might expect to see subservience in the relationship of a woman with battered woman syndrome. Dr. Bloom commented that a woman, after being victimized repeatedly, takes on a passive stance since it avoids violence or forestalls of violence.

[273] In the present case it cannot be said that Stephen was passive in her relationship with Patriquen. The intercepted communications demonstrate that she was not passive in her dealings with Patriquen. Her own testimony reflects that at times she was verbally and, on occasion, physically aggressive with Patriquen.

[274] In the case of a woman who had battered woman syndrome Dr. Bloom would expect to see fearfulness and the violence getting worse over time. Dr. Bloom noted that the literature concerning domestic violence and battered woman syndrome shows that violence escalates over time.

[275] According to Dr. Bloom a woman who presents with battered woman syndrome suffers from a cognitive distortion. The cognitive distortion in such a case is (1) that there is no escape and the woman comes to believe this; (2) that change is on the horizon. The latter is especially seen after a contrition phase even though it is apparent that violence is likely to occur again.

[276] Dr. Bloom referred to post traumatic stress disorder as a medical diagnosis that has been around for a long time. The disorder is caused by something out of keeping with the norm which has happened to the person such as an accident or a rape that has involved a threat to the person. This violence or threat must have produced results in three areas. (1) The violence or threat has to have had such an affect that it has caused intrusive recollections such as nightmares or flashbacks. The persistent re-experiencing of the traumatic event is a threshold issue for a diagnosis of post traumatic stress disorder, (2) There must be avoidance in one form or another. For example with an accident situation the person would not drive or get into cars after the accident; (3) The event must have so traumatized the person that the nervous system has been put on alert. In other words a persistent hyper-arousal or hyper-vigilance. If symptoms 1 through 3 were present and not attributable to something else such as, for example schizophrenia, then post traumatic stress disorder could be diagnosed. Dr. Bloom advised that in cases of battered woman syndrome there is an overlap between post traumatic stress disorder and battered woman syndrome since women who have battered woman syndrome have some of the symptoms of post traumatic stress disorder. He stated that a finding of post traumatic stress disorder was not required in order to find battered woman syndrome.

[277] Dr. Bloom's evidence was that the physical abuse seen in cases of women with battered woman syndrome was of such intensity that it was more of a beating than a hit. The syndrome includes psychological abuse, condescending behaviour foul language, defaming a woman's abilities, education and accomplishments as well as sexual abuse since abusers in battered woman syndrome situations are very egocentric. The abuser requires that his needs be met when he wants them to be met. In such a situation declining a request for sex would be an invitation to violence.

[278] Dr. Bloom testified that when the issue in a case is battered woman syndrome, a forensic psychiatrist should look for an understanding of the way in which the abusive relationship impacted on the victim's behaviour her thought

processes, her emotions, her self-concept and her cognitive functioning. It is apparent from a review of Dr. Bourget's evidence and her report that Dr. Bourget did not do this with Stephen.

[279] In his review of the documentary evidence provided Dr. Bloom noted that some question had been raised by other mental health professionals about whether Stephen was suffering from a mood disorder, however he commented that this question was left unanswered by Dr. Bourget. In reviewing the documents he noted that Dr. Thangaroopan referred to bipolar symptoms and Dr. Bloom would have made a close assessment to determine whether or not that was present.

[280] It was Dr. Bloom's opinion that abusers of women who have battered woman syndrome do not avoid squabbles by leaving the scene, but rather they deal with them by using violence. In the present case it is clear that Patriquen often left the home whenever he and Stephen argued or got into some sort of a squabble.

[281] Dr. Bloom was in agreement with Dr. Bourget that battered woman syndrome is not a DSM IV diagnosis.

[282] In the documentary evidence he reviewed Dr. Bloom referred to a report by Dr. O'Neil where there was notation that Stephen had told Dr. O'Neil that she was angry with Patriquen and sleeping in her daughter's room. Dr. Bloom viewed this as an independent decision by Stephen to defy Patriquen and deny him intimacy. He referred to this as not being characteristic of a battered woman syndrome situation.

[283] Dr. Bloom commented that in the April 2006 notes of Ms. Gavin and Dr. Bhaskara Stephen reported abuse as a two-way street. He was unsure of what she meant by that and would have discussed it with her to see if it meant that she could be aggressive too. Those same notes also indicated that Stephen told Dr. Bhaskara and Ms. Gavin about being aggressive with Patriquen and throwing things at him. Dr. Bloom was of the view that in a battered woman syndrome scenario this type of behaviour was not common. He stated that in women with battered woman syndrome there is no challenging profile since for the most part the victims become keenly aware of what to do and not to do to preserve themselves and their families. Being aggressive would invite a retaliatory response by the abuser. One of the things abused women learn over time is what to do and say so as not to bring about an attack on them.

[284] Dr. Bloom found in the notes of Dr. Bhaskara and Ms. Gavin that Stephen was quite candid about her own aggressiveness and her legal wranglings with Patriquen. Dr. Bloom's opinion was that a battered woman in circumstances where she was anticipating a return to the home would be rather circumspect in disclosing such things since it could potentially affect her preservation.

[285] Dr. Bloom noted that Ms. Haylock had dual mandates but her notes which lacked detail about the case appeared to be more therapeutic than medical legal notes. In light of the fact that Stephen testified that it was not until her time with Ms. Haylock that she saw certain things about her relationship with Patriquen, Dr. Bloom, if he had been conducting the psychiatric assessment, would have discussed with her whether she had come to realize that presenting herself in a certain way could affect the outcome of her legal proceedings. He would have explored whether therapy affected, in any way, how the subject presented her case to the psychiatric assessor. He would also have asked whether the realizations were those of the subject or suggestions made by the therapist. Dr. Bloom stated that a therapist should avoid influencing the client's thoughts.

[286] Dr. Bloom testified that he would have discussed with Stephen what her thoughts were about getting out of the relationship when Patriquen was in jail. Dr. Bourget did not ask her about this.

[287] In reference to Stephen's comments about her mother saying you made your bed you lie in it, Dr. Bloom would have wanted to know whether she took that literally and did it really mean til death do us part. This was another issue which was not addressed by Dr. Bourget.

[288] In his review of the documentation and wiretap transcripts Dr. Bloom identified verbal abuse in the relationship between Stephen and Patriquen and noted that it was reciprocal. He characterized their relationship as reciprocally abusive. This, according to Dr. Bloom, does not fit neatly into battered woman syndrome since battered women are more typically conflict avoidant. Dr. Bloom expressed his views about Stephen taking Patriquen on about his drinking. He described it as not characteristic of a woman in a battered woman syndrome situation because such behaviour challenges the abuser about something that he does not want to be challenged or nagged about. It is more common for battered women to adopt a stance of passivity and compliance. Dr. Bloom would have

explored whether Stephen had concerns about demanding that monies owed to her be repaid since such discussions might lead to violence.

[289] Dr. Bloom would not expect to see a reduction in the level of violence in a battered woman syndrome scenario. Given that there was a reduction in violence between the Jamaica incidents and other events of violence, Dr. Bloom would have questioned Stephen about what allowed that reduction in violence to occur and what external and internal factors were at play.

[290] Dr. Bloom's training and experience has led him to conclude that alcohol and cocaine have a noxious affect on violence. He was of the view that the use of alcohol and cocaine might shed some light on the violence that occurred in Jamaica. The McCurdy incident of violence he would have wanted to explore whether it was an eruption of violence caused by anger and alcohol or a concerted beating.

[291] In the intercepted communications of February 6, 2000 (Exhibit 26, Tab 23) Stephen told her son that what she was doing with McCurdy was payback for Patriquen being with another woman at the bar. Dr. Bloom testified that battered woman are not known for payback and usually the sole act of payback of a woman with battered woman syndrome is killing her abuser.

[292] On the basis of the material which he reviewed Dr. Bloom found it difficult to find a specific enduring technique for staying alive that Stephen used.

[293] Because Dr. Bloom did not assess Stephen it was therefore not proper for him to give an opinion or a diagnosis, however from the material he reviewed he found it difficult to extract from that a profile of a woman who was rendered so dysfunctional by the violence as that typified by Walker in *Battered Woman Syndrome*. In particular he saw nothing in the documents of the three phases of the cycle of violence. He had no doubts that it was an abusive household and a dysfunctional household. He was, however, unclear as to what the diagnostic picture was for Stephen and could not determine whether the criteria for post traumatic stress disorder had been made out.

[294] His opinion was that Dr. Bourget made a conclusion without linking the psychiatric issues with the legal issues. I agree with Dr. Bloom. I find that Dr.

Bourget's report was conclusory and did not address the issues at play in these proceedings.

[295] As a forensic psychiatrist he would have had conversations about Stephen about the elements of the offence and obtained her views about receiving tainted money, taking trips paid for by tainted money, receiving presents and whether such things caused her any suffering or whether they influenced her in any way.

[296] Dr. Bloom said that he would have made inquiries about her attitude about receiving tainted money despite the fact that she acknowledged in her evidence that the funds received were tainted. He would have made these inquiries because Stephen put her mental state in issue.

[297] Dr. Bloom was steadfast in his opinion that as a forensic assessor no information provided by the client can be accepted at face value. He would consider what the person said, but that would not mean that he would accept it at face value, rather he would see where it fit in with the other information available. A review of Dr. Bourget's evidence confirms that she accepted at face value what Stephen told her.

[298] He conceded that some women deny or downplay the violence in their relationships. He believed that psychological testing should have been used to establish that she was not malingering because discrepancies existed between what Stephen told Dr. Bourget and what the other information, available to her, revealed.

[299] According to Dr. Bloom a forensic psychiatrist must look at the person and their actions in the past and in the present in order for a proper assessment to be done.

[300] Dr. Bloom stated that there can be a traumatic bond with an abusive partner without there being battered woman syndrome. A finding that such a bond exists does not end the inquiry of whether the person has battered woman syndrome. The traumatic bond is part of a concept of learned helplessness. He did not agree with the defence proposition that once a traumatic bond is created there is no need for any further violence to have the woman comply. The presence of a traumatic bond may lower the amount or frequency of violence but this may also be because the

woman has been trained well and has become submissive or compliant. If the woman stands up and argues it goes against the traumatic bond being present.

[301] Foremost in Dr. Bloom's mind was the issue of defiance since in a battered woman syndrome situation defiance can lead to violence. Stephen was defiant as evidenced by the intercepted communications.

[302] Dr. Bloom was not sure that learned helplessness in childhood led to learned helplessness in adulthood.

[303] He conceded that Patriquen appeared to be an abusive man but he could not make a diagnosis of him since he did not interview him.

[304] Dr. Bloom stated that he has never overlooked asking for medical records where he thought it was important. He would almost invariably ask to speak with the family doctor and see the family doctor's records. In the present case he was of the opinion that the family's doctor's records were relevant and valuable since patients do speak to their family physicians about mental health issues. These medical records might also reveal physical observation made by the physician as a result of his or her contact with the patient.

[305] It was Dr. Bloom's position that if the only information he had was that coming from the subject of the assessment then he would flag that in his report. He was of the opinion that Dr. Bourget should have asked for information and noted that she did not get it.

[306] In dealing with the three phases of a cycle of violence he agreed that the tension building phase was present in Stephen's situation but believed that it was linked to Patriquen's drinking. He viewed the violence in this case as being particularly contextual. A battered woman would be so finely attuned to her abuser that she would be keenly aware of what to do not to trigger the violence.

[307] He disagreed with the proposition that Stephen brought on the violence inflicted during the McCurdy incident to reach the contrition phase. The problem Dr. Bloom had was that he could not determine what the contrition phase was in this case since he did not have information about that.

[308] He agreed that isolation can play a role in the cycle of violence and that there was an element of the traumatic bond coming from her isolation in Jamaica and the violence that occurred there. Dr. Bloom agreed that Stephen presented features of battered woman syndrome and conceded the possibility that Stephen was a battered woman who stayed in the relationship due to the traumatic bond. He stated, however, that nothing in what he saw, read and heard made him feel comfortable with such a finding.

[309] When given a hypothetical which referred to a woman who is argumentative and aggressive, Dr. Bloom indicated that such characteristics went against the view that the woman suffered from battered woman syndrome. Of importance was his comment that if battered woman syndrome is diluted with atypical features then one is not dealing with battered woman syndrome.

[310] He did not see the cycle of violence being considered in Dr. Bourget's report. He conceded as well that the intercepted communications showed elements of the cycle of violence but did not agree that it indicated there was battered woman syndrome. Stephen was in an abusive relationship, however, the cycle of violence that Walker spoke about in her text was not clearly well defined in this case.

[311] Referencing Dr. Bourget's comment in her report that Stephen shared some of the features of battered woman syndrome, Dr. Bloom could not understand what features Dr. Bourget was referring to.

[312] Dr. Bloom synthesized all of the information which he had and this led him to conclude that, although Stephen had some characteristics of battered woman syndrome, she was not a battered woman syndrome victim.

[313] It was Dr. Bloom's opinion and one shared by the Court that the kind of psychiatric examination required for the issue at play in this case was not carried out by Dr. Bourget.

[314] Dr. Bloom was of the opinion that basic issues such as Stephen's cognitive perception or whether her capacity for volitional behaviour was impaired were not addressed by Dr. Bourget or her report.

[315] Duress is a particular application of the defence of necessity. It is, like necessity, an excuse based defence. It is not, as is self-defence, a justification. Self-defence, necessity and duress however all arise under circumstances when a person is subjected to an external danger and commits an act that would otherwise be criminal as a way of avoiding the harm the danger presents: *Hibbert v. The Queen* (1995), 99 C.C.C. (3d) 193 (S.C.C.) at p.220.

[316] Excuses absolve the accused of personal accountability by focussing, not on the wrongful act, but on the circumstances of the act and the accused's personal capacity to avoid it. Necessity and duress are characterized as concessions to human frailties in this sense: *R. v. Ruzic*, [2001] S.C.J. No. 25 at para.40.

[317] Duress operates to relieve a person of criminal liability only after he or she has been found to have committed the prohibited act with the relevant intent. In other words the issue of whether an accused can invoke an excuse or justification arises only after the Crown has proven the existence of all the evidence of the offence including the necessary intent.

[318] Duress involves the concern that morally involuntary conduct not be subjected to criminal liability: *R. v. Ruzic (supra)* at para.31.

[319] Both the statutory defence of duress set out in s.17 of the *Criminal Code* and the common law defence of duress rests on the concept of moral voluntariness. Moral involuntariness signifies the accused had no "real" choice but to commit the offence: *R. v. Ruzic (supra)* at para.39.

[320] The distinction between duress and necessity is that duress arises from the wrongful threats or violence of another human being and necessity arises from any other objective danger threatening the accused: *Hibbert v. The Queen (supra)* at p.221.

[321] The statutory defence contained in s.17 of the *Criminal Code* is a codification of the defence of duress. This defence applies only to persons who commit the offence as principals: *R. v. Paquette*, [1976] 30 C.C.C. (2d) 217 (S.C.C.). The common law defence of duress which is preserved by s.8(3) of the *Criminal Code* is available to those persons who are liable as parties to the offence: *Hibbert v. The Queen (supra)*.

[322] In the case at bar the Crown seeks to establish Stephen's liability on both counts in the indictment as both a principal and a party to the offences charged.

[323] The defence of necessity must meet three clear and strict conditions: (1) A clear and eminent danger; (2) An absence of any reasonable legal alternative to breaking the law; and (3) A proportionality between harm inflicted and harm avoided in the sense that the harm avoided must be either comparable to or clearly greater than the harm inflicted: *R. v. Latimer*, [2001] 1 S.C.R. 3 at paras.29-31.

[324] The defence of duress contains four elements which can be summarized as follows: (1) The accused must act solely as a result of the threats of death or serious bodily harm to himself or herself or another person; (2) The threats must be of such gravity or seriousness that the accused believed that the threats would be carried out; (3) The threats must be of such gravity that they might well have caused a reasonable person in the same situation as the accused to act in the same manner. To put it another way, would a person of reasonable firmness sharing the characteristics of the accused such as age and background have responded to the threats; (4) The accused must not have had an obvious safe avenue of escape.

[325] If the evidence will support a reasonable doubt about each of these elements then the Court must find the accused not guilty. On the other hand if the Court is satisfied beyond a reasonable doubt that any of these elements is not available on the evidence and therefore does not apply, then the accused is not excused from criminal liability for her actions: *R. v. McRae*, [2005] O.J. No. 3200, 77 OR. (3d) 1 (Ont.C.A.).

[326] Section 17 prescribes a purely subjective belief by the accused that the threat would be carried out. It does not require the accused's belief to be reasonable.

[327] The common law defence of duress has both a subjective and objective component in the assessment of the gravity of the threat and the existence of a safe avenue of escape. The gravity of the threat and the safe avenue of escape must be examined from the point of view of a reasonable person but similarly situated. Consideration must be given to the circumstances where the accused found herself and her ability to perceive a reasonable alternative to committing the crime bearing in mind her background and essential characteristics: *R. v. Ruzic (supra)* at para.61.

[328] The Court in *Ruzic* directs that there must be a close temporal connection between the threat and the harm threatened such that the accused loses the ability to act freely. Lebel J. commented on this by stating at para.65:

...A threat that would not meet these conditions, because, for example, it is too far removed in time, would cast doubt on the seriousness of the threat and, more particularly, on claims of an absence of a safe avenue of escape.

[329] The availability of a safe avenue of escape removes the defence of duress. The reason being is that “if the accused had the chance to take action that would have allowed him or her to avoid committing the offence, it cannot be said that he or she had no real choice when deciding whether or not to break the law”; *Hibbert v. The Queen (supra)* at p.228.

[330] The Court must, in assessing the defence of duress, be mindful that verification of a spurious claim may prove difficult. Accordingly, the Court is required to apply reasonable but strict standards for the application of the defence: *R. v. Ruzic (supra)* at para.59.

[331] There is insufficient evidence to find that Stephen acted under compulsion by threats when she either possessed the proceeds of crime or refinanced the home. There is no close proximity between the threat, if believed, and the commission of the offence so as to find that she could be excused because of compulsion or duress.

[332] Other than her testimony about being threatened in early February 2000 there is no other evidence from Stephen or any other source to show that during the period between February 5, 2000 and April 14, 2000 when the home was refinanced that Stephen was assaulted or threatened with violence.

[333] Counsel for Stephen argued that she did not have a good picture of what was going on. The evidence, however, convinces me beyond a reasonable doubt that Stephen knew exactly what was going on. She knew she was living with a drug dealer whose illegitimate source of income provided her with all the amenities she wanted - a beautiful home, a nice car, vacations, jewellery and the freedom to do as she pleased. A freedom that she would not otherwise have had on her salary alone.

[334] I do not accept the submission that the police foreclosed Stephen's ability to defend herself on these charges by not investigating whether Patriquen had known sources of income in the period preceding 1995. The police investigation covered the period from 1995 to 2000. Patriquen's employment status before this time was irrelevant. The police knew that Patriquen had worked legitimately in 1991 or 1992 but had no information concerning any subsequent employment or investments for him. Stephen acknowledged in her evidence that Patriquen, to her knowledge, had no lawful source of income.

[335] In assessing the evidence for the defence credibility was an important issue. It is for that reason that I have applied the test set out by the Supreme Court of Canada in *R. v. W.D.* (1991), 63 C.C.C. (3d) 397 (S.C.C.).

[336] Having considered all the evidence, I do not accept the evidence of Stephen nor does her evidence raise a reasonable doubt.

[337] I am satisfied based on the totality of the evidence that the Crown has proven the guilt of Stephen beyond a reasonable doubt.

[338] I am satisfied beyond a reasonable doubt that Stephen was in the relationship with Patriquen out of choice. Nothing in the evidence presented indicates that Stephen was lacking the capacity to make choices. She willfully chose to accept the benefits that accrued to her by living with someone who was involved in criminal activity and who she knew had no lawful source of income. She chose to remain with him despite having numerous opportunities to leave.

[339] I do not accept that Stephen viewed Patriquen and his activities as morally corrupt or that she remained in the relationship because she was suffering from battered woman syndrome. I do not accept that a traumatic bond existed which kept her in this relationship.

[340] It cannot be concluded, based on the evidence presented, that Stephen's behaviour both inside and outside the home was the product of learned helplessness. Nor can it be found that Stephen adopted a passive and compliant stance as a means of survival.

[341] The assault perpetrated on her in February 2000 was not, as was argued, brought about by Stephen herself so that she could move from the tension building

phase to the contrition phase in Walker's cycle of violence. That assault was one which was contextual in nature and fuelled by alcohol and emotions.

[342] The accused by her actions, which speak louder than words, demonstrated that she was not beyond manipulating situations to serve her own needs. She admitted to lying to the police in order to protect Patriquen. She admitted lying to the banks on numerous occasions so that funds could be loaned to her and she embellished her evidence before this Court about her childhood experiences as a means of supporting her defence. She has shown by her previous words and actions that she is not beyond manipulation in order to achieve her goals. Her testimony in these proceedings must be viewed in the light of her belief, as a result of the therapy she has received, that she was a battered woman and that this would be of assistance to her in defending herself on these charges.

[343] The evidence shows that Stephen had the capacity to leave her relationship with Patriquen but chose not to do so. It also satisfies me that she had the capacity to choose whether or not to commit these offences. She chose to commit them. This was a morally voluntary act on her part. She may now regret having made that choice but at the time she made the choice she did so voluntarily.

[344] I am satisfied beyond a reasonable doubt that Stephen did not act solely as a result of threats of death or serious harm. I am also satisfied on the same standard that Stephen had many safe avenues of escape but simply chose not to take them. She had the opportunity to leave and avoid committing these offences when Patriquen went to Jamaica for extended periods or when he was in jail for even longer periods. She chose not to take these safe avenues of escape. It cannot be said that she had no real choice when deciding whether or not to break the law.

[345] The evidence establishes that Stephen never considered leaving Patriquen. It was not that she considered the option and rejected it because of fear for herself or her children; it was simply that she never even considered it.

[346] On the totality of the evidence I cannot conclude that Stephen committed these criminal acts as a means of avoiding harm or danger to herself or others.

[347] I am satisfied that the Crown has proven both offences beyond a reasonable doubt. I am also satisfied on the same standard that the Crown has proven that s.17

of the *Criminal Code* and the common law defence of duress are not available to the accused.

[348] I find, on the totality of the evidence, that there was no imminent peril at the time Stephen possessed the proceeds of crime or at the time when she dealt with the property.

[349] Accordingly I find the accused guilty as charged on both counts in the indictment.

Felix A. Cacchione



Government
of Canada

Gouvernement
du Canada

National
Parole Board

Commission nationale des
libérations conditionnelles

Ottawa, Ontario
K1A 0R1

Ottawa (Ontario)
K1A 0R1

PARDON

The National Parole Board is pleased hereby to award to

Reginald Marvin Coates

a pardon under the Criminal Records Act.

AND this pardon is evidence of the fact that the Board, after making proper inquiries, was satisfied that the said

Reginald Marvin Coates

has remained free of any conviction since completing the sentence and was of good conduct and that the conviction(s) should no longer reflect adversely on his/her character and, unless it ceases to exist or is subsequently revoked, requires the judicial record of conviction to be kept separate and apart from other criminal records and removes any disqualification to which

Reginald Marvin Coates

is, by reason of the conviction, subject by virtue of any Act of Parliament or a regulation made thereunder.

Given at Ottawa, this 21st day of August, 2009

Harvey Cenaiko
Chairperson



SCHEDULE OF OFFENCE(S)

RESPECTING A PARDON UNDER THE CRIMINAL RECORDS ACT

NAME: Reginald Marvin Coates

DATE OF BIRTH: 1945-04-15

FPS: 671830E

RECORD OF OFFENCE(S):

2002-05-30, Halifax, Nova Scotia
Possession of proceeds of crime
Reference: Unknown