

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *R v. Caldwell*, 2008 NSSC 67

Date: 20080305

Docket: 282722

Registry: Kentville

Between:

Her Majesty the Queen

Plaintiff

v.

Terry Ernest Caldwell

Defendant

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- Judge:** The Honourable Justice Gregory M. Warner
- Heard:** February 27th, 2008, in Kentville, Nova Scotia
- Written Decision:** March 7th, 2008 (Oral Decision rendered on March 5th, 2008)
- Subject:** Section 7 Charter challenge to *CDSA* charges
- Summary:** Accused is charged with possession for the purpose of trafficking and cultivating marihuana as a result of the search of his residence in November 2006. He has three serious medical conditions and uses marihuana to deal with them. After the search, he commenced an application to possess and cultivate marihuana with the assistance of his supporting physician. He did not complete the application process. He challenges the constitutionality of the charges under Section 7 of the Charter, relying on declaration by some other Courts that the Marihuana Medical Access Regulations (MMAR) do not adequately provide legal access to marihuana for those who need it for medical purposes.
- Issues:**
1. Is the Accused's right to liberty and security of the person under Section 7 of the Charter engaged by *CDSA*?
 2. Do the MMAR, as presently implemented by state policy, satisfy the principles of fundamental justice?

Results:

1. The Accused's right to liberty and security of the person under Section 7 is engaged by the *CDSA*.
2. There was no evidence to this Court that the MMAR, as presently implemented by Government policy, arbitrarily, that is, contrary to the principles of fundamental justice, restrict the accused access to obtain authority to possess and produce marihuana for medical purposes, or his access to a legal supply of marihuana. The Court rejected the analysis in recent decisions in **Long** (OCJ) and **Sftekopoulos** (FC).

Application is dismissed.

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