

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Primrose, 2009 NSSC 241

Date: 20090805

Docket: Bwt 307712

Registry: Bridgewater

Between:

Her Majesty the Queen

Appellant

v.

Christopher Wayne Primrose

Respondent

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Judge: The Honourable Justice Glen G. McDougall

Heard: June 10, 2009/ August 5, 2009, in Bridgewater, Nova Scotia

Written Decision: August 13, 2009

Subject: Appeal of an interlocutory ruling made in Provincial Court prior to a final order or determination.

Summary: A preliminary motion was made at the commencement of trial on charges of operating a motor vehicle while impaired and having more than 80 milligrams of alcohol in 100 millilitres of blood. The court's ruling pertained to the retrospectivity versus prospectivity of the legislative changes made by Parliament to s. 258(1)(c) of the **Criminal Code**. After the Trial Judge made his ruling the matter was adjourned to give the Crown time to appeal the interlocutory ruling to the Summary Conviction Appeal Court.

Issue: Does the Summary Conviction Appeal Court have the jurisdiction to hear an appeal of an interlocutory ruling of a Summary Conviction Court prior to a final order or determination at trial?

Result: Although the Crown presented a number of good policy reasons for hearing the appeal of the interlocutory ruling and had the support of defence counsel, the Court's jurisdiction is derived from the legislation. Section 830(1) of the **Criminal Code** allows an appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial **or other final order or determination** [emphasis added]. Prior to obtaining a final order or determination there is no jurisdiction for the Summary Conviction Appeal Court to entertain an appeal of an interlocutory ruling. The Court's jurisdiction comes from the statute; it does not flow from the common law. The appeal was premature and, therefore, not properly before the Court.

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