

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Bennett, 2002 NSSC 271

**Date:** 20021210

**Docket:** CR114851

**Registry:** Sydney

**Between:**

Her Majesty The Queen

v.

Christopher Bennett

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**LIBRARY HEADING**

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**Restriction on publication:** Limited publication on reproduction of trial evidence.

**Judge:** The Honourable Justice A. David MacAdam

**Heard:** November 25 to December 9, 2002 in Sydney

**Written Decision:** December 20, 2002

**Subject:** Criminal trial - Duty of Crown to challenge accused's testimony

**Summary:** The defence called the accused who testified another accused person killed the victim. The Crown stated it had no questions for the accused. Held the defence was in error in stating that by not cross-examining the accused, the Crown is to be taken as having accepted the accused's version of events. The defence citing *Browne v. Dunn* (1894), H.L. 67 (C.A.) and subsequent authorities applying the principle therein, said Crown counsel had improperly addressed the jury in suggesting inconsistencies between the evidence of the accused, that she had not challenged, with evidence of civilian and police witnesses as well as the co-accused that had been called by the Crown. The Crown presented no evidence following the evidence of the accused. The authorities following *Browne v. Dunn, supra*, holding it is improper for counsel to later call evidence contrary to an earlier witness's version of events where they have not put to the earlier witness the contrary version of events were not applicable.

The accused knew the evidence presented by the Crown. Applying *Palmer and Palmer v. The Queen* (1979), 50 C.C.C. (2d) 193 (S.C.) and *R. v. Khuc* (2002), 142 C.C.C. (3d) 276 (B.C.C.A.), the Crown is entitled to decline to cross-examine the accused and for that matter any of the witnesses called by the defence. It is not for the Crown to fill in any gaps the accused may have left in his testimony. The decision on whether or not to cross-examine is for counsel to make. As stated in *R. v. Khuc, supra*, “Counsel who does not cross-examine takes the chance that the evidence will be accepted ...”. The criticisms by counsel for the defence of the decision not to cross-examine the accused and to have addressed the jury suggesting possible inconsistencies in his evidence was both unwarranted and uncalled for.

**Issue:** Whether Crown counsel is required to cross-examine an accused who testifies, or otherwise is deemed to have accepted the accused’s version of events.

**Result:** There is no obligation on Crown counsel, or any counsel, to cross-examine any witness, including the accused.

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