

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Ryan, 2010 NSSC 114

Date: 20100325

Docket: CRD-295372

Registry: Digby

Between:

Her Majesty the Queen

v.

Nicole Patricia Ryan (Doucet)

Restriction on publication: Restriction on publication pursuant to s. 486.5(2) of the *Criminal Code of Canada*.

Judge: The Honourable Justice David P. S. Farrar

Heard: December 7, 8, 9, 14, 2009, and January 25, 29, 2010
in Digby, Nova Scotia

**Final Written
Submissions:** March 8, 2010

Oral Decision: March 25, 2010

Written Release: March 30, 2010

Counsel: Peter J. Craig, for the Crown
Joel E. Pink, for the defendant

By the Court:

[1] Nicole Patricia Ryan (Doucet) has been charged on or about March 27, 2008, at Bridgetown, Nova Scotia she counselled an undercover police officer to commit the offence of murder which offence was not committed contrary to Section 464(a) of the *Criminal Code of Canada*.

[2] Section 464(a) of the *Criminal Code states*:

Counselling offence that is not committed

464. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely,

(a) every one who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable; and

[3] The Supreme Court of Canada in *R. v. Hamilton*, [2005] 198 C.C.C. (3d) 1, clearly delineates the *actus reus* and *mens rea* for counselling offences. At para. 29 the court held:

In short, the *actus reus* for counselling is the deliberate encouragement or active inducement of the commission of a criminal offence. The *mens rea* consists in nothing less than an accompany intent or conscious disregard of the substantial and unjustified risk inherent in the counselling: that is, it must be shown that the accused either intended that the offence counselled be committed, or knowingly counselled the commission of the offence while aware of the unjustified risk that the accuse either intended that the offence while aware of the unjustified risk that the offence counselled was in fact likely to be committed as a result fo the accused's conduct.

[4] At trial, a number of admissions were made by the accused including an admission that the Crown has proven a *prima facie* case.

[5] The accused also admitted the audio and video tapes of the conversation she had with the undercover officer as well as a statement made by the accused to a police officer after her arrest.

[6] I am satisfied based on the admissions and by listening to and viewing the materials attached to court ex. 1 (Agreed Statement of the Facts), that the requisite elements of the offence have been established by the Crown beyond a reasonable doubt.

[7] Therefore, the only issue for me to determine is whether the common law defence of duress is available to the accused.

[8] The defence advanced that the accused should be excused from criminal liability because, during the relevant time frame, she was under duress. The accused testified on her own behalf and called both lay and expert evidence in support of the defence. Cacchione J. in *R. v. Stephen*, [2008] N.S.J. No. 43, reviewed the authorities, in detail, and sets out what the court must decide in determining whether a defence, such as duress, should be considered by the court. He held:

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)m 162 C.C.C. (3d) 129 (S.C.C.) Paras, 48-84L *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. Oslin* (1993)m 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

[9] The issue, for me to decide, is whether there is evidence reasonably capable of forming a basis for an acquittal.

[10] The air of reality test applies to all elements of the defence. *R . v. C. (T.L.)*, 2004 CarswellAlta 888, at para. 73.

[11] If the accused fails to adduce evidence to the requisite air of reality standard on any of the elements of the duress defence, there is nothing for the Crown to respond to. Cacchione, J. in *R. v. Stephen, supra*, at para. 324 sets out the necessary elements of defence of duress:

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.

[12] It is on this law that I must assess the evidence to determine whether all of the elements of defence of duress have been established to the requisite standard.

[13] The accused, at the time of the trial was 38 years of age. She is a university graduate with a B.A. and a B.Ed. from the Universite College de St. Anne's. She was married to Michael Martin Ryan on April 16, 1992. They have one child, Aimee. At the time of the trial they had separated. The accused is one of nine children, she has six sisters and two brothers. She described her family as close-knit, however, following her marriage to Mr. Ryan, the relationship with her parents and siblings became strained over time.

[14] She described a relationship which saw her and Mr. Ryan being apart for considerable periods of time between 1992 and 1997.

[15] Between Christmas in 1993 and January of 1997, they were living together in Edmonton but did not see a lot of each other. However, it was at this point that the accused first began to have concerns about Mr. Ryan's temper and violent behaviour in their relationship. Sometime in 1994, she and a neighbour were having a discussion about Pierre Elliot Trudeau. Mr. Ryan did not agree with the positions being presented by the accused and the neighbour. After the discussion finished, the accused and Mr. Ryan went home. At that time, he started to yell and scream at her, pushed her up against the wall, squeezed her neck, and punched the wall. He also referred to her in a derogatory manner. The accused testified that this was the first time anything like that happened. After this point in time, she realized there were certain issues that could not be discussed with him including any issues relating to minorities, including her own heritage as an Acadian.

[16] If she disagreed with him he would accuse her of being naive.

[17] The accused testified that on a number of occasions, approximately every week to a week and half, she was subjected to threats of violence, and at one time when they were in Edmonton she testified that he said to her words to the effect "Do not test me, I will kill you".

[18] In 1996, Mr. Ryan was transferred to Trenton, Ontario, from Edmonton. Ms. Ryan testified that the threats of physical violence continued while they were in Trenton. While there, he treated her more as a servant rather than a spouse.

[19] The accused said that she thought things would get better over time. Obviously, they did not.

[20] It was also during the time in Trenton that she was forced to engage in intercourse and, if she complained about it hurting, he responded “You like it that way”.

[21] In or around September 1996, the accused moved from Trenton to Concession, Nova Scotia to get a job.

[22] She lived with her parents, and at Christmas Mr. Ryan came to visit her for one month.

[23] On that occasion, he suffered a broken ankle as a result of a fight in a bar with Nassim Hanna. Mr. Hanna was called to give evidence and corroborated that he was involved in a fight at that time with Mr. Ryan.

[24] In 1997, Herbert Boudreau, the accused’s father, purchased a house in Little Brook for his daughter and Mr. Ryan. At that time, Mr. Ryan was transferred from Trenton to Gagetown, New Brunswick.

[25] The accused testified that Mr. Ryan did not permit her to go and live with him in Gagetown.

[26] Sometime in 1999 or 2000, Mr. Ryan went to Bosnia. After returning from Bosnia sometime in 2000, he was transferred to Camp Aldershot and remained there until 2004-2005, when he retired as a full soldier.

[27] While stationed at Aldershot, he lived at the base while Ms. Ryan lived in Little Brook. He would visit on weekends.

[28] The Ryan’s had a daughter on March 20, 2000. After the birth of their daughter, Ms. Ryan said that the control increased. In particular, the relationship with her family soured.

[29] For example, Mr. Ryan would become angry if their daughter would pay attention to her maternal grandfather.

[30] His control included requiring her to be home at a set time during the weekdays to take a phone call from him. Ms. Ryan said that failure to take the phone call at the appointed time would result in “Hell to pay”.

[31] Ms. Ryan testified to a number of incidents which occurred between 2000, and 2004, including one incident when Mr. Ryan was firing a gun in the backyard. Ms. Ryan indicated to him that he should not be doing that because they had neighbours. At that point, Mr. Ryan put the gun to her head and laughed at her because she was afraid, telling her that she was a wimp and a weak soldier. He also told her at the time that he could do whatever he wanted.

[32] After 2002, she was cut off from her family, and Mr. Ryan made it clear she was not to have anything to do with them.

[33] Mr. Ryan was diagnosed with Hepatitis C, approximately 2002 or 2003, and the outbursts continued. In or around that time, he threatened to burn the house down and destroy Aimee and Ms. Ryan if she ever left him.

[34] Mr. Ryan returned home permanently in 2004. At that time Ms. Ryan was teaching at the Ecole Secondaire De Claire, teaching junior and senior high. Ms. Ryan testified that after 2004, the situation got progressively worse. The control and possessiveness increased. For example, she could not shop and had to be home everyday by 4:50 p.m. Once she went to visit her sister and on another occasion one of her sisters came to visit her. On both occasions, Mr. Ryan became very angry at her. On the occasion when her sister came to visit her, Mr. Ryan became angry, to the point Ms. Ryan testified, that she thought he was going to hit her sister.

[35] After her sister left he broke a chair, and one of the parts of the chair hit him. He picked up that piece of the chair and threw it at Ms. Ryan.

[36] Ms. Ryan also testified to at least three incidents in which there were guns: one occasion when Mr. Ryan was cleaning the guns at the table. When she asked whether he had to do that in the kitchen, he became very angry and indicated to her that he could do what he wanted, when he wanted, while holding the gun to her head.

[37] Ms. Ryan also described another disturbing incident in May or June of 2007, when she attended a Nova Scotia Teachers Union party. Her husband left at 10:00 p.m., and she stayed until approximately 1:00 a.m. to 1:30 a.m. When she got into bed, she sensed that Mr. Ryan was angry.

[38] He got out of bed and walked around to her side of the bed and put a gun to her head, he accused her of inappropriate conduct with the other teachers and asked her whether she thought her friends liked her?

[39] Ms. Ryan testified to other incidents where she said her husband threatened her. In particular, he threatened to kill her and Aimee and bury them in the land behind their property. Mr. Ryan described to her in detail how he was going to dig a trench and put them in it and pile garbage on top of them. Other incidents which Ms. Ryan attributed to Mr. Ryan include:

- He described in some detail what he would do to each member of her family.
- She suspected him of shooting a neighbour's dog because the dog was on their property.
- He threatened to shoot a coyote and put it in her father's truck.
- He accused her of an affair with the principal of her school.
- There were numerous incidents of road rage.
- Carrying a gun under the driver's seat of the car.
- She was forced to have oral sex and feared what would happen if she refused.

[40] In 2006, after one and a half years at home, he started working at Camp Aldershot in Kentville. They had purchased a property in the early years of 2000 on Stead Street in Kentville.

[41] The property was rented until December of 2006, at which point the house was renovated. Between January and April, the upstairs level was renovated and in April, the second level was renovated. During this period of time, Mr. Ryan was living in Kentville.

[42] Ms. Ryan testified that the threats of violence against her and her daughter and her house continued through January and June of 2007. At some point she

suggested that they get a divorce, at which point he pushed her against the shed and said “You are not getting a divorce,” and words to the affect of “Don’t test me. I will destroy you before I get a divorce”.

[43] During the summer of 2007, Ms. Ryan was ill. Commencing in May of 2007, she had suicidal thoughts, which thoughts occurred again in July and August.

[44] At this point in time, the summer of 2007, Mr. Ryan was having a “fling” and would openly bring his girlfriend to the house in Kentville.

[45] In the fall of 2006, Ms. Ryan testified that Mr. Ryan convinced her to take some money from an account which she held with her mother. She did so. Ms. Ryan’s mother subsequently sued for return of the money and Mr. Ryan wanted Ms. Ryan to sign an affidavit that her mother had given the money to them as a gift. Apparently, the affidavit was part of an application to set aside a judgment which had been obtained by default by Ms. Ryan’s mother against them. Ms. Ryan advised she would no longer lie for him. At that point, Mr. Ryan indicated to her on telephone “I will destroy you. I will burn the f...ing house down. I don’t care if you and Aimee are in the house. I will phone social services. I can prove that you are mentally ill. You will be nothing”.

[46] On that day, Ms. Ryan decided that she would have to move out of the house. Her fellow teachers and the principal helped her move out of the house. She stayed with the principal for approximately three weeks and on December 26, 2007, moved to her sister Louise’s house.

[47] Ms. Ryan had testified that Mr. Ryan had been charged with uttering threats against her but those charges were eventually dropped. She called the RCMP on nine occasions, victim services on eleven occasions, and 911 on one occasion.

[48] Ms. Ryan also testified to her attempts to obtain a peace bond.

[49] During the period of 2007, Mr. Ryan was removing items from the house in Little Brook which led to a confrontation between Ms. Ryan’s father, her sister, and Mr. Ryan.

[50] On February 17, 2008, Ms. Ryan detailed an incident which occurred at her school (this incident was corroborated by other witnesses). On that day, Laurie

Anne Comeau, a co-worker of Ms. Ryan's, came to her and said that Mike Ryan was in her car. She told her that he had it started and had the wipers going. The police were called and came an hour after they had been telephoned. During this period of time, Mr. Ryan continued to sit in the car with it running. Ms. Ryan was informed at that time there was nothing the police could do because it was a civil matter. Apparently, the vehicle was registered in the name of Mr. Ryan.

[51] Ms. Ryan testified that she had attempted to use every avenue available to her to resolve the concerns she had about Mr. Ryan and, in particular, her concern that he would do harm to herself or her daughter.

[52] According to her none of these options provided any recourse to her.

[53] This is essentially the evidence of Ms. Ryan. I accept her evidence that the relationship she described and the events she has described relating to that relationship are true. Her evidence was corroborated, in certain respects, by other witnesses that will be detailed later in this decision.

[54] Ms. Ryan was questioned, extensively, in cross-examination about why she did not report the incidents of abuse to other individuals, including some of the professionals which she saw.

[55] She indicated that she felt shame and embarrassment. She also blamed herself in the sense that she was not somehow fulfilling the expectations of a spouse. It was not articulated by Ms. Ryan in that way, however, that is what I took from her evidence. I place very little significance on her failure to report the incidents to other individuals or to medical professionals. The experts that gave evidence in this proceeding testified that it was not unusual for a woman in situations such as Ms. Ryan to feel inadequate, guilty, and suppress the information that might later become indicative of abuse.

[56] I have no difficulty in concluding that Michael Ryan was a manipulative, controlling, and abusive husband, that sought at every turn to control the actions of his wife, be they social, familial or marital.

[57] I was asked by the Crown to call into question her credibility based on her demeanor on the video tapes and in giving her statement to the police. To the contrary, my review of the video tapes and Ms. Ryan reveals to me a woman who

finds herself in a situation where she is ready to risk everything. In particular, I observed an individual who was, in essence, being manipulated by the police and had no willpower to fight back. For example, when she told the police officer that she was paranoid and wanted him to remove his shirt, he immediately responded in an aggressive manner to her to make her feel what she was requesting was ridiculous. When he responded in this manner she immediately dropped the subject, much the same as I suspect she had done with her husband in many occasions.

[58] Another incident was when the undercover officer suggested to Ms. Ryan that Mr. Ryan's girlfriend maybe become collateral damage in any potential "hit". Again, her demeanor, to me, on the tape is not one of a malevolent person but rather one of an individual that is in such a hopeless situation that whatever was necessary, she was prepared to accept.

[59] The Crown has also invited me to look at the timing of the offence and conclude, from the timing of the offence that the motive for Ms. Ryan wanting her husband killed at that time was a custody hearing which was going to take place the following week.

[60] The weakness in this argument is that it was the police who initiated the contact with Ms. Ryan not the other way around. It was they who controlled the timing of the encounter not Ms. Ryan. I am not satisfied that the timing of the offence had anything to do with the timing of the family court hearing. The urgency is more likely related to the threat Ms. Ryan perceived.

[61] The Crown called, in rebuttal, Dr. Hy Bloom. Dr. Bloom is eminently qualified, however, his report (ex. 14) did very little to assist me. In his report, at p. 1:

I am consequently not in a position to offer any definitive diagnoses for Ms. Ryan/Doucet. Nor can I offer an opinion concerning the psycho-legal issue(s) in her case, namely, whether, from a psychiatric perspective, Ms. Ryan/Doucet suffers from a mental disorder or condition that could make her eligible for a defence of duress.

[62] His report appears to be an attempt to discredit Ms. Ryan, based on inconsistencies in her reporting to the various medical professionals and her demeanor at the time of her arrest.

[63] However a particular note in this report, at p. 37 give the following passage:

I perhaps should have stated this early on, but I do not take issue with the proposition that female (or male) victim of abuse may not be forthcoming about the nature, depth and scope of and their abuse, and may otherwise minimize it, out of shame, guilt or fear. It is well known that domestic violence and multiple other forms victimization are under reported.

[64] He was also critical of the manner in which Dr. Stephen Hucker conducted his evaluation of Ms. Ryan.

[65] I will deal with Dr. Hucker's report later in this decision. However, I did not find Dr. Bloom's analysis of Dr. Hucker's report particularly helpful. I was able to review the report of Dr. Hucker myself and to evaluate his opinion based on his report and on his oral evidence.

[66] However, having found that Ms. Ryan's account of the events was credible does not end this matter.

[67] I must review all of the evidence in its totality to determine if the elements of the defence of duress have been established to the requisite standard. I will now do so.

[68] Dr. Hucker is a Forensic Psychiatrist and was qualified to give opinion evidence in area of forensic psychiatry. I found Dr. Hucker's evidence and his report (ex. 7) very helpful. Dr. Hucker made it clear that he was doing a psychiatric assessment in the legal process and he was not intending to be therapeutic. His report was done in medical/legal context.

[69] He does a thorough review of the reports on Ms. Ryan, as well as his own assessment, and reaches conclusions with respect to her condition. In particular at p. 15 he concluded:

Her self-concept appears to involve a generally harsh, negative self-evaluation. She is prone to be self-critical and pessimistic, dwelling on past failures and lost

opportunities with considerable uncertainty and indecision about her plans and goals for the future. Given this self-doubt, she tends to blame herself for setbacks and sees any prospects for future success as dependent upon the actions of others.

[70] Dr. Hucker continued at p. 16 as follows:

Her interpersonal style seems best characterized as submissive, conforming, and perhaps naive. She likely finds it difficult to assert herself or display any anger in relationships; this may be driven by anxiety about potential rejection by others. She will tend to feel helpless and overwhelmed under relatively mild pressure and will dependently seek the assistance of others. Her concerns about offending others may potentially provide situations where others could take advantage of her.

[71] This observation by Dr. Hucker accords with my observation of Ms. Ryan on the video tape. As soon as the police officer became the least bit aggressive to her, she would not assert herself and displayed the very characteristics which Dr. Hucker notes in his report.

[72] It also explains why Ms. Ryan would not disagree with the police officer when he suggested that there maybe collateral damages as a result of the “hit” upon her husband. As well Dr. Hucker’s observation of her also explains why she was easily led into the police sting operation.

[73] It is not hard to see how Ms. Ryan, when receiving a telephone call from the undercover officer, would see this as her “white knight” and could be convinced that the individual presenting himself to her could be a solution to all of her problems.

[74] It would only add that it seems somewhat ironic the system which had failed to address the issues that Ms. Ryan had with her husband was only too eager to come to her aid and provide a solution when it would potentially result in her committing a criminal offence.

[75] Dr. Hucker, in giving his testimony, also elaborated on the characteristics of battered woman syndrome. Although he did not particularly like that terminology, he felt it was better described as an abuse syndrome whether it occurred in woman or men.

[76] He described as in a situation where the abuser is in control, they want to deprive the victim of making any decisions and want the person to conform. They are jealous of the victim being in contact with others, and the victim is required to be subservient. Often the abuse is cyclical in the sense that there are outbursts of violence (physiological and or physical) and then periods of calm. From the victims' point of view, they find a way for excusing the behaviour. They feel sorry for the abuser and they feel that if they remain in the relationship things will change.

[77] Dr. Hucker pointed out that sexual, physiological, and emotional abuse can be harder to address than physical abuse. No one can see the scars, there is nothing visible.

[78] Victims of abuse, according to Dr. Hucker, survive by adapting. The victim does not argue with the abuser and stays away from issues that are provocative.

[79] A number of emails were introduced into evidence in the cross-examination of Ms. Ryan (ex. 4), the purpose of the introduction of these emails was to call in to question Ms. Ryan's account of events. The review of the emails show a relatively cordial exchange between Ms. Ryan and her husband. Dr. Hucker reviewed the emails and did not consider them to be inconsistent with the abuse described by Ms. Ryan. He explained that being nice and charming are characteristics of a batterer.

[80] The emails are also consistent with the characteristics of the victim described by Dr. Hucker.

[81] He explained that victims tend to be easily placated, especially if the abuser wants something. During this period of time Mr. Ryan was seeking to have Ms. Ryan sign an affidavit to set aside the default judgment that had been filed. As Dr. Hucker noted, and I agree, the degree of placation by Mr. Ryan is striking.

[82] I am also bothered by the fact that the emails only range in time from October 3, 2007, to November 23, 2007. I have no way of knowing whether these are all of the emails that passed between parties during that period of time, nor was there any explanation given as to why there were no emails entered into evidence prior to October 3, 2007.

[83] Mr. Ryan did not give evidence to explain the time frame nor to address any other conversations that may have occurred.

[84] Even with the degree of placation that is found in the emails, an insight in to Mr. Ryan's personality can be seen in the last email sent February 23, 2007. He concludes the email as follows:

I'm done, I will not talk to you anymore, I will not answer my phone.

[85] This follows the email from Ms. Ryan where she tells him that she is no longer going to participate in the process of the setting aside of the default judgment. It also follows a conversation which he had with Ms. Ryan that morning. The tone of the email is consistent with Dr. Hucker's description of a abuser. During the time that Mr. Ryan is looking for something from Ms. Ryan, he is very cordial. However, once he realizes that he is not going to get what he was looking for, he once again becomes the aggressor.

[86] I am satisfied that Ms. Ryan had the characteristics of an abused person as set out in Dr. Hucker's report.

[87] Madeleine Deveau, a clinical social worker, has 37 years experience in counselling, physiotherapy and therapy within individuals. She was qualified as an expert to give evidence in that area. She also prepared a report outlining her treatment of Ms. Ryan dated April 26, 2008 (ex. 8).

[88] Ms. Deveau treated Ms. Ryan from November 14, 2007, to February 27, 2008, a total of nine sessions.

[89] At the initial treatment, Ms. Deveau was struck by her "extreme thinness".

[90] Ms. Ryan described Mr. Ryan to her as "controlling and often full of rage" at p. 1 of her report Ms. Deveau states as follows:

I sensed she had internalized much: her shame fit her denial of the physiological and emotional abuse she had experienced.

[91] This description of Ms. Ryan is consistent with the characteristics of an abused victim described by Dr. Hucker. It is also important to note that

Ms. Deveau saw in Ms. Ryan before she was charged and before there was any indication of a defence of duress being raised.

[92] Ms. Deveau also makes reference to the concerns that Ms. Ryan had that Mr. Ryan was increasing his efforts to torment her. These events, which I had previously outlined in the evidence of Ms. Ryan, heightened her fear of Mr. Ryan and increased her sense of hopelessness (ex. 8, p. 2).

[93] Ms. Deveau, at p. 2 of her report make the following comment:

In my years of working with survivors of abuse I have often heard individuals say that the mental abuse was worse than the physical: their self worth would become completely eroded, they came to believe that they were to blame. Research shows that abuse does not have to be physical or sexual to be harmful. Psychological abuse in an intimate relationship - abusive power and control - can be just as detrimental to physical and mental health (citation omitted).

[94] Ms. Deveau also noted that the most dangerous time for a victim is when they assert themselves, leave and/or stop all contact. Again, this is consistent with the evidence of Ms. Ryan as she related it in court and as she related it to Ms. Deveau. In particular, in the session on December 10, 2007, the notes of Ms. Deveau (ex. 8) indicates that Mr. Ryan threatened to “burn down the house and hurt her”.

[95] Ms. Ryan also spoke to Ms. Deveau of Mr. Ryan’s road rage and her fear for her daughter’s safety.

[96] Once again, Ms. Ryan would have to have considerable insight into the defence of duress to raise these issues with Ms. Deveau in December, with a view to using them as a defence in this proceeding. On December 19, Ms. Deveau makes that notation that she is “terrified”. Ms. Ryan expresses the same fear to Ms. Deveau on January 10, 2008.

[97] At this point in time, there had been a complaint made to Child Protection Services about Ms. Ryan’s ability to parent her daughter. The complaint, Ms. Deveau suspected, was made by Mr. Ryan.

[98] Ms. Deveau received a telephone call from the child protection worker and categorized the complaint as a further form of abuse by Mr. Ryan.

[99] There is twice in the notations of Ms. Deveau that the comment is made by Ms. Ryan that “He always wins”.

[100] On January 30th, Ms. Deveau makes a notation that Ms. Ryan has “always a fear - the belief that he will continue to do all he can to destroy her”.

[101] In the final session on February 27, 2008, details of the incident at the school with Ms. Ryan’s automobile are detailed. Ms. Deveau notes that Ms. Ryan felt shame when the incident occurred.

[102] Once again, this is consistent with Dr. Hucker’s description of victims of abuse. The evidence of Ms. Deveau is consistent with Ms. Ryan’s evidence that she felt a real fear for her safety and the safety of her daughter during the period of November 2007, to March 2008.

[103] The defence also called Laurie Anne Comeau, the principal at Ecole Jean Marie Gay.

[104] Ms. Comeau, at the time of the offence, was a co-worker of Ms. Ryan. I was impressed by Ms. Comeau and the manner in which she gave her evidence. She was articulate, straightforward, and did not attempt to embellish her evidence, even though she has been friends with Ms. Ryan for 25 years.

[105] Ms. Comeau taught at the same school as Ms. Ryan three days out of five in the relevant period in 2008. In January to March of 2008, she often had lunch with her.

[106] It was Ms. Comeau who first noticed Mr. Ryan in Ms. Ryan’s car in February, 2008.

[107] At first, Ms. Comeau thought it was Ms. Ryan in the car, however, noticed it was a man with a ball cap.

[108] She recognized Mr. Ryan’s truck and advised Ms. Ryan that he was in her car. At that point, she testified Ms. Ryan’s eyes got big and she got really tense.

[109] Ms. Comeau noticed that Ms. Ryan was very afraid. The police were called and arrived sometime later and it was advised that they could not do anything because the car was in Mr. Ryan's name.

[110] I pause here to comment that the placing of the car in Mr. Ryan's name is another indication of his control over Ms. Ryan. Similar to him requiring her to have the deed to the house in Little Brook signed over to him by Ms. Ryan, another act which is consistent with the evidence of Dr. Hucker about abuse victims.

[111] His arrival at the school on that particular day is, yet, another example of his assertion of total control over Ms. Ryan. The school was the one place that she indicated that she could feel safe, he had now made it known to her that ,if he wanted to, he could attend at her school and take her car. It also would have been known to Mr. Ryan that this was the only means of transportation that Ms. Ryan had and that she would have needed it for work and to pick up their daughter that day.

[112] The incident is also instructive from the point of view of the police indicating their inability to assist Ms. Ryan in anyway.

[113] Ms. Ryan indicated to Ms. Comeau on that day that she "had no hope".

[114] Ms. Comeau had other observations of Ms. Ryan in particular:

- She didn't socialize.
- Ms. Comeau tried to call her on a number of occasions and the phone would be answered by her husband who would indicate that she was sleeping.

[115] A particular significance on March 27, 2008, the day of the offence, Ms. Comeau saw Ms. Ryan in the hallway at school. She noted that her eyes seemed to be going "everywhere", and her appearance was physically different.

[116] Ms. Comeau inquired about her what was wrong. The response she got was that it was "not going well". Ms. Comeau noted that she had not seen her looking like that before.

[117] Another co-worker of Ms. Ryan, Phillip Leblanc also gave evidence. Mr. Leblanc, like Ms. Comeau struck me as an impressive witness.

[118] Mr. Leblanc observed between September and October, 2007, that Ms. Ryan seemed to be anxious and to have lost a lot of weight. Her hands trembled and she seemed to be preoccupied. In December, in the beginning of the month, she came to see him looking for a place to stay. He eventually agreed to allow her to stay with him. Ms. Ryan and her daughter occupied two rooms upstairs and Mr. Leblanc occupied the downstairs.

[119] In the beginning, Ms. Ryan slept on the couch fully dressed, and was always asking if the doors were locked. She smoked constantly.

[120] Mr. Leblanc testified about one evening when Ms. Ryan, her daughter and he were making Christmas cookies when the doorbell rang. At that point, he looked over at Ms. Ryan and she was “frozen”, he could see it was fear. Mr. Leblanc went to answer the door and when he came back he found that Ms. Ryan and her daughter had gone to hide in the bathroom.

[121] He also was involved with helping Ms. Ryan move in November, 2007. Mr. Leblanc, Marc Poirior and Lynn Theriault helped with the move.

[122] When he went to the house he noticed that there was very little furniture left, a floor had been removed, a closet was down to the two by fours, and a window had been removed.

[123] He was there between approximately 3:30 p.m. and 11:30 p.m., during that time there were seventeen cell phone calls and he did not count the house phone calls.

[124] He said that the phone calls were unnerving for Ms. Ryan. She was crying and did not know what to do.

[125] At one point in time, a vehicle came up the road and turned in the driveway. It appeared to Mr. Leblanc to be a truck and at that time Lynn Theriault decided to call the police. The police arrived in approximately half an hour, questioned

Ms. Ryan and called to see if Mr. Ryan was in the area. I was not advised of the results of that investigation.

[126] In January of 2008, her level of anxiety, from Mr. Leblanc's observations, seemed to increase. Mr. Leblanc also testified that Ms. Ryan required her car for work as she was required to find work placements for the students in the work place.

[127] In March of 2008, Mr. Leblanc was getting concerned with her mental state, she seemed to be getting more distant.

[128] He saw her on March 26, the day before the offence, he went to see her because he was concerned about her state of mind. She was resistant to speak with him and said she was very busy.

[129] Mr. Leblanc also noted that he never saw Ms. Ryan or Mr. Ryan at any of the staff parties.

[130] Another co-worker of Ms. Ryan, Mark Joseph Porier, also gave evidence. He was Vice President of Ecole Secondaire De Claire at the time that Mr. Ryan was there in February 2008. He was informed of Mr. Ryan's presence by Laurie Anne Comeau and called the police immediately. He observed Ms. Ryan, at that time, she was very upset and nervous, crying and shaking. Mr. Porier met the RCMP and asked for Mr. Ryan to be removed. He also informed them that he did not want Mr. Ryan to be at the school.

[131] The police informed him that it was a civil matter and they couldn't do anything.

[132] Ms. Ryan informed Mr. Porier that she was not safe at the school anymore and that he was "coming to get her".

[133] He was also involved in helping Ms. Ryan move in November of 2007, he noted that she appeared stressed and anxious at that time.

[134] The defence also called Alan Green. Mr. Green was involved with a road rage incident on March 26, 2007, with Mr. Ryan.

[135] The incident culminated in Mr. Ryan attempting to hit Mr. Green, instead he hit the back window of Mr. Green's vehicle smashing it. He also smashed the left mirror on the vehicle.

[136] Mr. Ryan was found guilty after a trial on that matter. The testimony of Mr. Green, again, corroborates the evidence of Ms. Ryan about Mr. Ryan's temper and what he was capable of doing.

[137] The defence also called Jeanette Doucet, the 48 year old sister of Ms. Ryan.

[138] She testified about seeing holes in walls in the Ryan's home in Edmonton. She also testified about seeing Mr. Ryan putting his hands around Ms. Ryan's neck in or around Christmas of 2000 indicating that he would "squeeze your scrawny little neck". I accept Ms. Doucet's evidence as truthful.

[139] Finally, Ms. Jeanette Doucet gave evidence of the familiar breakdown and said she saw very little of Ms. Ryan between 2002 and 2007. Ms. Ryan was invited to Easter, Christmas, and other family events, however, she never attended.

[140] Defence called two other witnesses Joslin Irene Leblanc and Nassim Hanna. Ms. Leblanc simply gave evidence as to the good character of Ms. Ryan. With respect to Mr. Hannan, he gave evidence of a fight he was involved in with Mr. Ryan in December 1996. He described the attack as completely random and on provoked. The significance of Mr. Hanna's evidence is to show the longstanding history of violence with respect to Mr. Ryan.

[141] The long standing history is also corroborated by ex. 3, the medical records which were introduced by consent which indicates that Mr. Ryan, as of 2002, had longstanding issues with anger, awareness and management.

[142] The Crown, in addition to Dr. Bloom, called Dr. David Mulhull and introduced his report dated November 17, 2007, ex . 11. Dr. Mulhull is a clinical Psychiatrist from Kentville, Nova Scotia. He examined Ms. Ryan on November 17, 2007. He did so as a result of a referral from her family physician. At the time of seeing Dr. Mulhull she weighed approximately 100 lbs. I have already commented on my views with respect to the credibility of Ms. Ryan and Dr. Mulhull's assessment of her for one hour on November 17, 2007, does not affect my finding on her credibility.

[143] I note that Dr. Mulhull's report paints a considerable different picture than what is purported to be the situation in ex. 4. Exhibit 4 is emails passed between the parties between October 3, 2007 and November 23, 2007. He diagnosed her with adjustment disorder with depression, eating disorder, suffering from interpersonal issues, and stress. He also details, from her account, the problems that she was having in dealing with her husband.

[144] The report does not suggest a cordial relationship as I was asked to infer from the emails.

[145] Dr. Mulhull like the other medical professionals indicated that victims of abuse maybe not be forth coming about the circumstances of that abuse. He also acknowledged that the one hour meeting did not allow a lot of opportunity to delve into her long history.

[146] The Crown also called Dr. Robert Arthur Pottle, a psychiatrist employed with Capital Health at the East Coast Regional Hospital. He preformed a court ordered assessment of Ms. Ryan and concluded that she was fit to stand trial. Dr. Pottle testified that Ms. Ryan gave considerable details about emotional abuse and threats of physical harm, but no evidence of any sexual or physical abuse.

[147] I also reviewed all of the information put into evidence by consent, including the items in the Agreed Statement of Fact.

[148] As stated previously, I have no difficulty in finding that Mr. Ryan was an abusive and manipulative individual. Further, I have no difficulty determining that Ms. Ryan was justified in her fear of violence from him. However, as Mr. Craig correctly points out on his brief, the accused must adduce evidence to the requisite air of reality standard on all components of the defence. It is only then that it is incumbent on the Crown to show beyond a reasonable doubt, taking into account the totality of the evidence, that the accused did not act under duress. (*R. v. Ruzic*, [2001] S.C.J. 25, at para. 100) I now turn to the elements of duress, and apply the evidence, as I have found it, to those elements to determine whether the accused has met the requisite burden:

Elements of Duress

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.

[149] I am satisfied that the accused has met her burden with respect to this element of the test.

[150] Mr. Ryan had on a number of occasions, indicated to Ms. Ryan that he was going to “destroy her” this fear manifested itself in a number of ways including, chain smoking and loss of weight.

[151] As previously stated, the fear exhibited at Mr. Leblanc’s home in around Christmas of 2007, is evidence of her fear of Mr. Ryan. I’m also satisfied that Mr. Ryan made these threats of violence as indicated by Ms. Ryan in her testimony. The threats of violence escalated after Ms. Ryan refused to sign the legal documents which Mr. Ryan wished to submit to the court.

[152] I find that Ms. Ryan’s fear of Mr. Ryan was the sole reason for her actions.

2. The threats must be of such gravity or seriousness that the accused believed that the threats would be carried out.

[153] I am satisfied that the accused has led evidence to the requisite standard that she believed that Mr. Ryan would cause her and her daughter serious bodily injury.

[154] Ms. Ryan gave evidence in some detail of her 15 year relationship with Mr. Ryan and what he was capable of doing. The one person that could have rebutted all of these accusations against Mr. Ryan, was Mr. Ryan himself. He was present in court on the first day and it was indicated that he was a potential Crown witness. He was excluded from the courtroom on that day. However, he never gave evidence.

3. The threats must be of such gravity that they might well cause a reasonable person in the same situation as the accused to act in the same manner.

[155] Again, I am satisfied that the accused has met the requisite standard with respect to this part of the test. A reasonable person in the circumstances of Ms. Ryan would seek to find a solution to her plight. She had attempted to have the matter dealt with by the authorities; however, she was repeatedly faced with the

response that it was a “civil matter”. A reasonable person in the circumstances of Ms. Ryan, when an individual presented themselves to her with a solution to her problem would have acted in the same manner faced with the evidence as I have outlined it, including the history of Mr. Ryan’s violence towards others, his manipulative and controlling manner, his access to firearms, the threats which he made, and the lack of response by any persons in authority, establishes this element of the defence.

[156] I would also point out that I do not consider that the threat to Ms. Ryan and her child had diminished at the time of the commission of the offence. She had very good reason to fear that she could suffer harm at the hands of Mr. Ryan. I now turn to the fourth element of the defence of duress:

4. The accused must not have an obvious safe avenue of escape.

[157] This is by far the most difficult aspect of this case.

[158] The Supreme Court of Canada in *R v Hibbert* [1995] S.C.J 63, discussed in considerable detail, the safe avenue of escape requirement and the requisite test. At para. 55 of *Hibbert* the court held:

55 The so-called "safe avenue of escape" requirement in the law of duress is, in my view, simply a specific example of a more general requirement, analogous to that in the defence of necessity identified by Dickson J. -- the requirement that compliance with the law be "demonstrably impossible". As Dickson J. explained, this requirement can be derived directly from the underlying concept of normative involuntariness upon which the defence of necessity is based. As I am of the view that the defence of duress must be seen as being based upon this same theoretical foundation, it follows that the defence of duress includes a similar requirement -- namely, a requirement that it can only be invoked if, to adopt Dickson J.'s phrase, there is "no legal way out" of the situation of duress the accused faces. The rule that the defence of duress is unavailable if a "safe avenue of escape" was open to the accused is simply a specific instance of this general requirement -- if the accused could have escaped without undue danger, the decision to commit an offence becomes, as Dickson J. observed in the context of necessity, "a voluntary one, impelled by some consideration beyond the dictates of 'necessity' and human instincts".

[159] After a through analysis of the law in this area the court concluded at para. 60:

60 The defences of self-defence, duress and necessity are essentially similar, so much so that consistency demands that each defence's "reasonableness" requirement be assessed on the same basis. Accordingly, I am of the view that while the question of whether a "safe avenue of escape" was open to an accused who pleads duress should be assessed on an objective basis, the appropriate objective standard to be employed is one that takes into account the particular circumstances and human frailties of the accused.

[160] Therefore, I must consider on the totality of the evidence, whether there is evidence assessed on an objective basis, taking into account the particular circumstances and human frailties of Ms. Ryan, satisfies this element of the defence to the requisite standard.

[161] I find that at the time of the commission of the offence Ms. Ryan was in a very vulnerable state, she had lost a considerable amount of weight, was dissociated and despondent. She had an intense fear of Mr. Ryan, was feeling helpless, felt she had lost control and felt she was threatened with annihilation.

[162] While true she had engaged the police and other agencies in an effort to assist her in the past, the evidence was that her problems were viewed as a "civil matter". Her condition accentuated her feeling that her appeals to the police and other agencies were going unheeded. Therefore, applying the test as previously set out I find that given that particular circumstances and frailties of Ms. Ryan, and viewing it objectively, there was no other safe avenue of escape available to her.

[163] The circumstances are unique in this case in that it is at a time when Ms. Ryan is at her weakest point that the avenue of escape presents itself to her, an undercover officer who is going to assist her in eliminating her husband. The perception of Ms. Ryan regarding the safe avenue of escape must also be viewed in light of her condition at the timing of encounter with the police.

[164] I am satisfied that the accused has met her burden with respect to this aspect of the defence.

[165] It is ironic, as previously stated, that one of the agencies she had appealed to, the police, was actually the avenue which presented itself to her to solve her problem.

[166] I am further satisfied that evidence has not been introduced by any party which would negative the defence. Again, I was struck by the fact that Mr. Ryan did not take the stand to give evidence with respect to any of the assertions that were made against him. Ms. Ryan was compelled to take the action she did by normal human instincts and self preservation. It would be inappropriate, under these circumstances, to attribute criminal conduct to her.

[167] Therefore, I am satisfied that the four elements of the defence of duress have been established to the requisite standard.

[168] As a result, I find Ms. Ryan not guilty of the offence charged.

Farrar
, J.