
MEMO

To: You (counsel for the Respondent Ryan)

From: Senior Partner

Date: September 30, 2011

Re: *R v Ryan*

We have been retained by Nicole Ryan to respond to the Crown's appeal of *R v Ryan* to the Supreme Moot Court of Dalhousie. I need you to write the factum and argue the appeal for me.

The appellant's factum is due on October 21, 2011. Counsel for the Crown will provide you with a copy of their factum, so that we'll have an opportunity to respond to it in our factum. I recommend that you begin researching and writing our factum before you receive the appellant's factum – you can always revise your draft to address any additional issues the appellant raises that you didn't anticipate.

Our factum is due on Friday, October 28, 2011 between 9:00 a.m. – 11:00 a.m. in Room 407. We must file three copies with the Court.

The appeal will be heard during the week of February 6-9, 2012. I am scheduled to be out of town for discoveries that week. You will need to check the Court's docket to determine the exact date and time of the appeal.

I've summarized the facts of the case below as found by the trial judge and set out the grounds of appeal to which we have to respond. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

Facts

Our client is a 37 year old school teacher who admitted trying to hire a hit man to kill her estranged husband. The 'hit man' was an undercover RCMP officer. Ms. Ryan was charged with counselling to commit murder, contrary to section 464(a) of the *Criminal Code*.

At trial, she presented a defence of duress. She testified that her husband had subjected her to many years of physical and sexual abuse during their marriage, and that he had threatened to kill both her and their child, Aimee. She believed he would act on those threats. She had reached out to police on nine occasions and also sought assistance from Victim Services, but none was forthcoming. She testified she felt she had no other option.

Ms. Ryan had previously tried, and failed, to hire a hit man. Her efforts came to the attention of the RCMP, who set up a sting operation. In March 2008, an undercover officer called her and offered to “do the job.” She agreed, and was arrested and charged.

At trial, she testified extensively about the abuse she suffered at the hands of her husband. The trial judge accepted her evidence. (Her husband did not testify.) The trial judge concluded that the defence of duress applied. He acquitted Ms. Ryan.

The Nova Scotia Court of Appeal dismissed the Crown’s appeal. The Crown appealed further to the Supreme Court of Canada. The Supreme Court of Canada also dismissed the Crown’s appeal, essentially on the same grounds as set out in the decision of the Nova Scotia Court of Appeal.

The Crown has now appealed to the Supreme Moot Court of Dalhousie on two issues:

First Issue:

1. Is the defence of duress available to the accused on these facts?

Second Issue:

- 2(a) Did the court apply the correct test for finding an air of reality?
- 2(b) If so, was there sufficient evidence in this case to establish an air of reality to the defence?

Sources

You will want to start by looking at the trial judge’s decision at 2010 NSSC 114 and the Nova Scotia Court of Appeal’s decision at 2011 NSCA 30.

(Note: We have assumed a judgment at the Supreme Court of Canada for the purposes of this exercise. You will not be able to locate this judgment. The Crown sought leave to appeal to the Supreme Court of Canada and the decision is pending.)

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to five cases on each issue, any relevant legislation you feel should be brought to the Court’s attention, and up to two secondary sources (such as journal articles). Lower court decisions in this matter do not count towards the five-case limit.

