CASE NO.	**VOL. NO.**	**PAGE**
Her Majesty The Queen	- and -	Terrance Maxwell Ryan
(Appellant)		(Respondent)
CAC 177821	Halifax, N.S.	Oland, J.A.

Citation: *R. v. Ryan*, 2002 NSCA 153

APPEAL HEARD: November 12, 2002

JUDGMENT DELIVERED: December 4, 2002

SUBJECT: **Criminal law - application of test for review in a summary conviction appeal**

SUMMARY: The respondent was found asleep in the driver's seat of a parked vehicle in early morning. The police officer who arrested him testified that his speech was very slurred, he had red, watery eyes, and his breath smelt strongly of alcohol. In her opinion, he was very intoxicated. A second officer who attempted unsuccessfully to complete a breathalyzer test gave evidence that, other than the strong smell of alcohol, he saw nothing to suggest that the respondent's ability to drive was impaired. The trial judge found the respondent guilty of having the care and control of a motor vehicle while his ability to operate a motor vehicle was impaired by alcohol.

The summary conviction appeal court judge reviewed the *indicia* of impairment observed by the officers, raised other inferences that could be drawn, and observed that there was no evidence suggesting lack of coordination or impaired motor functioning. He allowed the respondent's appeal against conviction.

ISSUE: Whether the summary conviction appeal court judge erred in his application of the test for appellate review of the reasonableness of a verdict.

RESULT: Leave to appeal granted, but appeal dismissed. The majority (per Oland, J.A. with Bateman, J.A. concurring) found that in re-examining and reweighing the evidence at trial, the summary conviction appeal court judge did not go beyond the permissible limits of appellate review. The assessment of impairment necessitated the drawing of inferences from the evidence and the other possible inferences that were identified were not speculative. Where the summary conviction appeal court judge had regard to all of the evidence, his examining each *indicia* of impairment observed by the officers was not objectionable. He did not simply substitute his view of the evidence for that of the trial judge.

In dissent, Chipman, J.A. would have allowed the appeal. The summary conviction appeal judge erred in applying the proper principles and in concluding that the finding of the trial judge were unreasonable and not supported by the evidence. He analyzed the evidence pertaining to each of the *indicia* of impairment in a piecemeal fashion, relied on inferences that were not supported by the evidence, and did not have regard to the evidence as a whole. Moreover, he overlooked circumstances under which the officer formed her opinion that the respondent was heavily intoxicated.