

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Messervey, 2004NSPC58

R. v. Ryan, 2004NSPC58

**Date:** 20040531

**Docket:** 1262639-644

1262647-653

1262656-657

**Registry:** Kentville

**Between:**

Her Majesty the Queen

v.

Arnold Clifton Messervey

and between:

Her Majesty the Queen

v.

Claudine Veronica Ryan

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**LIBRARY HEADING**

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**Judge:** The Honourable Judge Alan T. Tufts

**Heard:** March 8, 2004; April 6, 2004; April 19, 2004 (view);  
May 18, 2004 in Windsor, on location and in Kentville,  
Nova Scotia

**Subject:** **5(2) & 7(1) Controlled Drugs and Substances Act**  
**355 & 86(1) Criminal Code of Canada**  
**Admissibility of seizures made during search of**  
**accused residence**  
**Accuseds' motion for exclusion of seized items**

**Summary:** **The allegations against both accused relate generally to**  
**items of stolen property and guns that were found at a**  
**residence and with respect to certain drugs and**

**evidence of or allegations of a marihuana grow operation at the same residence.**

**The Crown concedes that there are in fact two residences; that the search warrant under which the police were conducting the search applied to that of one accused and not the other. The Crown conceded that the search of the residence of Ryan constituted a breach of her s. 8 Charter rights.**

**Issue: Whether the evidence of the seizure should be excluded pursuant to s. 24(2) of the Charter**

**Result: No evidence to connect Ryan to Messervey . They were not a couple. They do not share living arrangements other than what was necessary for Ryan to care for Mr. Messervey's father. She announced during the police search that they were entering “her side”.**

**The expectation of privacy in one's own residence is obvious and high. Search was obtrusive in that police entered the accused's bedroom and other private areas of the home. Breach is serious. Not satisfied that seriousness of the offences charged and the critical nature of the evidence to the Crown's case outweighs the seriousness of the Charter violation, notwithstanding that trial fairness is not affected.**

**Evidence of seizures are excluded relative to accused Ryan only.**

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***