

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** MacKinnon v. Bonnar, 2006 NSSC 55

**Date:** 20060220

**Docket:** SN 114631

**Registry:** Sydney

**Between:**

William Darrell MacKinnon

Plaintiff

v.

Simon Wilfred “Bossy” Bonnar

Defendant

**Judge:**

The Honourable Justice Frank Edwards

**Heard:**

September 27, 29, 30 October 12, December 6, 2005 and  
February 17, 2006 in Sydney, Nova Scotia

**Counsel:**

Hugh R. McLeod, for the plaintiff

Tony Mozvik, for the defendant

**By the Court:**

[1] The Plaintiff sues the Defendant in tort for assault. The Plaintiff alleges that the Defendant intentionally, and without justification, shot him in the leg.

[2] The Defendant, Bossy Simon Bonnar (“Bonnar”) age 35 – had been to a dance with his wife, Catherine, and Carolyn and Dan MacKinnon. They returned to Bonnar’s home at approximately 2 a.m. Sunday, October 24, 1999. They immediately discovered that the house had been broken into and a quantity of beer stolen. Bonnar was furious and left in Dan MacKinnon’s vehicle to try to find the intruders. He came upon a number of individuals including the Plaintiff, Darrell MacKinnon (“MacKinnon”), on the highway a short distance from the Bonnar home. Bonnar got out of the vehicle and made some accusatory inquiry regarding the break-in at his home. Bonnar grabbed the Plaintiff and gave him a shove. Bonnar then got back in the vehicle and proceeded on his way. Shortly thereafter Bonnar returned to his home.

[3] The Plaintiff, who had been drinking, likewise returned to his home. He was extremely upset as a result of his encounter with Bonnar. After a brief discussion with his wife (who advised him to stay put), MacKinnon left his residence intent

upon going to fight with Bonnar. On his way to Bonnar's he met up with Donald MacKinnon and Stanley MacKinnon and all three proceeded to Bonnar's residence.

[4] It is at this point that the accounts of the Plaintiff and Defendant diverge. The Plaintiff says he went to Bonnar's door and knocked. Bonnar's wife came to the door and MacKinnon asked to speak with Bonnar. The Plaintiff says he got off the doorstep and waited for Bonnar to appear. MacKinnon says that Bonnar came out, aimed the gun at him and fired a shot. On cross-examination, MacKinnon conceded that Bonnar may have first fired a shot in the air. The Plaintiff is adamant however that the shooting was intentional and not accidental.

[5] Stanley MacKinnon supports the Plaintiff's account. Stanley dismisses the possibility that the Plaintiff grabbed the gun causing it to accidentally discharge. He says the Plaintiff and the Defendant were about 15 feet apart when the tragic shot was fired.

[6] The Plaintiff's other companion, Donald MacKinnon, did not respond to a subpoena to testify. I issued a warrant for his arrest but neither the Sheriff nor the RCMP were able to locate him.

[7] The Plaintiff suffered a serious gunshot wound to his right ankle. The ankle has now been permanently fused and the right leg is one and a half inches shorter than the left. The right foot is turned permanently inward. The Plaintiff has been seriously debilitated by the injury.

[8] Bonnar, his wife Catherine, and Dan "Yok" and Carolyn MacKinnon gave evidence for the Defendant. Their evidence is consistent. All four were in the Bonnar's residence when they heard shouting from outside. All four said that threats were being shouted and that someone was threatening to kill Bonnar. Bonnar went out one door and Catherine, Dan and Carolyn went out the other (the two exterior entrances to the Bonnar residence were side by side though each had a separate doorstep platform). At that time, they all saw the Plaintiff, Darrell MacKinnon, Stanley and Don standing a short distance from the doorsteps. Bonnar ordered them to leave but MacKinnon indicated he was not going anywhere and that he wanted Bonnar to fight. Bonnar went back inside the house

to get his shotgun, a 12 gauge 3 shot semi-automatic. At that point, Catherine pleaded with MacKinnon to leave but he refused.

[9] Bonnar reappeared outside and fired one shot in the air. Holding the gun in his right hand, Bonnar then lowered the barrel so that it was pointing at the ground. He again ordered the threesome to leave. At that point, the Defendant and his witnesses say that Darrell lunged for the gun and actually grabbed hold of it. Bonnar's right hand was still holding the gun and his finger would still have been on the trigger. The gun went off causing the injury to Darrell's ankle.

[10] I am satisfied that the Defendant and his witnesses gave me a more probable account of what occurred on the night in question. The plaintiff has failed to satisfy me on a balance of probabilities that the shooting took place as he described. I find that the gun discharged accidentally when the plaintiff grabbed it while the defendant still had his finger on the trigger. The Plaintiff has therefore failed to prove that the defendant assaulted him.

[11] I am satisfied that the Defendant was justified in bringing the gun outside in an attempt to deter the three aggressors. Bonnar's children, then aged 9 and 11,

were inside the home. Bonnar's residence was over 40 miles from the nearest RCMP detachment. The Plaintiff and his companions were threatening to injure or kill the Defendant. Stanley MacKinnon had a criminal record involving firearms which was known to the Defendant. Bonnar's conduct was reasonable in the circumstances which existed at the time.

[12] Plaintiff's Counsel argued that it was impossible for the shooting to have occurred as described by the Defendant. I do not accept that argument. The version recounted by the Defendant is far more plausible than that given by the Plaintiff.

[13] Counsel also indicated that the Defendant's evidence at trial was inconsistent with that given at discovery. At discovery, the Defendant says the gun went off "because (the Plaintiff) bumped the gun and I hit the trigger and it went off" (discovery pp. 40-41, lines 379-380). At trial, he said the Plaintiff "made for the gun, grabbed it and it went off." With respect, I see no inconsistency between those two accounts. It bears keeping in mind that the gun in question was a semi-automatic. After the first shot was fired, the gun automatically re-loaded. All it required was some pressure on the trigger to discharge the second shot.

[14] Counsel also argued that Catherine Bonnar's evidence at trial was inconsistent with her discovery evidence. He points to the specific quote I note below. I note that Catherine's discovery evidence was not put to her in cross-examination. At any rate, there was no inconsistency. At trial, Catherine testified that the Plaintiff and his two companions "surrounded the step my husband was on". At discovery she said the three "had my husband surrounded ..." (discovery p. 7, Q. 63).

[15] I found Catherine's evidence to be believable. I also found the evidence of Dan and Carolyn MacKinnon to be credible. They did not strike me as people who would come to court and give false evidence. The Defendant's evidence, standing on its own, would be difficult to assess. When weighed in conjunction with his own witnesses and against that of the Plaintiff and Stanley MacKinnon, the Defendant's account appears more probable.

[16] The Plaintiff's witness Stanley MacKinnon did not impress me as a truthful witness. He admits to drinking "four beer" on the night in question. I suspect that that is a conservative estimate. Stanley denies that he was present near the house

when the shooting took place. I do not believe him. I therefore have considerable doubt about his evidence that the Plaintiff and Defendant were fifteen feet apart when the tragic shot was fired.

[17] The Plaintiff has paid a terrible price for his impulsive behaviour on the night in question. I suspect that had he been sober, he would not have decided to go to the Defendant's home that night. No doubt he has re-lived that night a thousand times since. I have the impression that in trying to justify and rationalize his actions, he has come to believe the version to which he testified. I am satisfied that his account is not to be preferred to that of the Defendant and his witnesses.

[18] The Defendant has referred me to *MacMillan v. Hincks* (2002) 313 A.R. 150 (Alta Q.B.) where the Court had to assess credibility where there were conflicting versions of the event. At paragraph 18, the Court set out the appropriate test:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the



probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...”

And further:

“The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. ...”

[19] As will be evident from the foregoing analysis, I have applied that test. The Defendant’s evidence is in accordance with the preponderance of probabilities in this case.

[20] As I have found that the shooting was accidental and not intentional, the Plaintiff’s case fails. I am therefore dismissing the Plaintiff’s case against the Defendant.

[21] In the circumstances, an award for costs would seem pointless. If Counsel feel otherwise, they should provide written submissions regarding same. Otherwise, Mr. Mozvik should prepare an Order dismissing the action.