

Citation: *R. v. Pope*, 2013 YKTC 47

Date: 20130626
Docket: 11-00724
12-00387
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Ruddy

REGINA

v.

TROY EDWARD POPE

Appearances:
Jennifer Grandy
Malcolm Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Troy Pope is facing six counts in relation to an altercation which occurred on January 2, 2012 at the home of Miranda Blanchard and William Peter, in Mayo, Yukon. The charges include common assaults on Miranda Blanchard, William Peter and Nancy Blanchard; an assault causing bodily harm on Harold Blanchard; and mischief in relation to damage to an exterior door. The injuries to Harold Blanchard, which included a broken jaw, have been admitted. The remaining count on the Information involves a keep the peace breach of a peace bond. It is charged as a s. 811, but, as it relates to a common law peace bond, Crown has sought to amend it to a s. 127 charge.

[2] Trial of this matter raises three distinct issues:

1. Whether, applying the test in *W.D.*, the evidence I accept is sufficient to satisfy me, beyond a reasonable doubt, that Mr. Pope committed the offences as charged;
2. Whether an amendment can be made to count 5, alleging an offence contrary to s. 811, after expiry of the six month limitation period for summary conviction offences; and
3. If so, whether s. 127 of the *Criminal Code* can be used as an enforcement mechanism for a breach of a common law peace bond.

The Evidence:

[3] The case for the Crown included a number of photographs, a copy of Mr. Pope's peace bond and the testimony of five witnesses: Cst. Stelter, Miranda Blanchard, Harold Blanchard, Nancy Blanchard and William Peter. Mr. Pope testified in his own defence and provided a number of additional photographs.

[4] Cst. Stelter testified that he was contacted by Miranda Blanchard regarding an assault on her and another individual at the residence she shares with William Peter. She indicated the assailant had left. Cst. Stelter received a second call from Miranda a few minutes later advising the assailant had returned and was banging on the door. Cst. Stelter attended the residence and noted the injuries to Harold Blanchard including dried blood on his chin and blood in his left eye which was partially closed. Troy Pope, identified as the assailant, was no longer at the residence. Mr. Pope was arrested the following day without incident. A month later, Mr. Pope approached him on the street demanding that "these people" be charged which Cst. Stelter took to mean the others who had been in the Blanchard/Peter residence at the time of the alleged offences.

[5] Miranda Blanchard indicated that she was in the kitchen when she heard a bang and her Aunt Nancy hollering. When she went in to the living area, she noted a chair overturned and her uncle Harold, Nancy's brother, on the ground with Mr. Pope punching and kicking him. When Nancy tried to intervene, she was, in Miranda's words, "thrown down and choked out" by Mr. Pope. Miranda tried to intervene, but was pushed down by Mr. Pope. William Peter, Miranda's common law spouse, then came in and attempted to intervene but was thrown against the stove, resulting in a mark on his back, then pushed over into the wall, resulting in a hole to the wall. Miranda called the police, and Mr. Pope ran out of the residence, leaving behind his jacket, shirt and keys. She called the police a second time when Mr. Pope returned and began yelling and banging on the door. Following the incident there was a dent in the door that had not been there previously. Miranda admitted to consuming four cups of wine.

[6] In Harold Blanchard's version, Mr. Pope knocked on the door, looked around then left only to return 15 minutes later, walking in without knocking. Mr. Pope and Nancy got into a dispute and started arguing. When Mr. Pope began choking Nancy, Harold grabbed Mr. Pope and tried to push him out the door. The two fell to the ground. Mr. Pope was sitting on top of Harold punching him in the face with his fist. Harold tried to fight back but was too intoxicated. Miranda and Nancy tried to intervene, but Miranda was thrown into the woodpile. Mr. Peter then tried to intervene, but was thrown against the stove. Mr. Pope left the residence only to return. Harold heard him hitting the door with a shovel or scraper and yelling that he was going to kill them all. Harold suffered a broken jaw, which appears to have been largely untreated, and swelling to his eye

resulting in blurred vision. Harold admitted to consuming a 26 ounce bottle of wine and eight beer.

[7] Nancy Blanchard says that Mr. Pope just walked into the residence and stood there. When Harold asked which Pope family he was from, Mr. Pope punched him. Harold fell off the chair to the floor. Mr. Pope sat on him and started punching him in the face. Nancy went over and grabbed Mr. Pope by the shoulders trying to pull him off. Mr. Pope reached around, grabbed her by the throat and pushed her over. Miranda said she was going to call the cops. Mr. Pope stood up, walked over to Miranda and Mr. Peter, pushed them and left the residence. Mr. Peter locked the door while Miranda called the police. Mr. Pope returned. Nancy says she heard him kicking at the door. Nancy admitted to consuming four beer.

[8] Mr. Peter says he came home from his niece's house to find Harold on the floor with Mr. Pope on top of him hitting him with his fist. Mr. Peter tried to grab him, but Mr. Pope pushed him down causing him to hit the wall injuring his knee. Mr. Pope left the residence but returned and swung a shovel at the door. Mr. Peter admitted to consuming both wine and beer. The amounts were unclear.

[9] Mr. Pope tells much different story. Unlike the other witnesses, he maintains that he had not been drinking as he was subject to an abstain condition on his peace bond. He says he first saw Harold on the porch at Suzy Johnny's house. He went up, and asked Harold if he remembered him. He accompanied Harold to the Blanchard/Peter residence where they all sat around visiting. Harold asked Mr. Pope where he knew him from to which Mr. Pope replied that he had been friends with Harold's daughter who

had tragically been murdered some time before in Whitehorse. Mr. Pope said he was sorry she had been murdered and noted that they had tried to blame one of his friends. Harold became angry, stood up, and told him to “fuck off” and get out of the house. Mr. Pope also stood up, telling Harold to “fuck off” and that it was not his place to tell Mr. Pope to leave as it was not his home.

[10] Mr. Pope says that Harold then grabbed him by throat and started squeezing until he could not breathe. Harold also knocked a cigarette out of Mr. Pope’s mouth causing a burn below Mr. Pope’s eye and on his forehead. Harold then punched him once in the face and twice on the side of the head. Mr. Pope punched Harold two or three times to try to get out of the choke-hold. He says the two got into a tussle, when Mr. Pope’s ankle gave out and they fell to the ground. Harold pulled Mr. Pope’s shirt and hoodie over his head. Mr. Pope was kicking and swinging around trying to get out of his hoodie, and felt what he believed to be more than one person hitting him. When he got the hoodie off, he says Nancy was scratching him on the arm and chest. He held her back by the chest to stop her.

[11] When Miranda said she was going to call the police, Mr. Pope grabbed his coat and left the residence. When he realized he did not have his jacket, shirt and keys, he returned to the residence. When the occupants would not open the door, he picked up the shovel and threw it at the door. He then went to a friend’s residence.

Assessment of Credibility:

[12] While never an easy task, this is a particularly difficult case in which to assess the credibility of each of the witnesses. The quality of the testimony of the Crown’s

civilian witnesses was hampered by alcohol consumption and a relative lack of sophistication, resulting in numerous differences and contradictions in recounting the events of January 2nd. Indeed, I have little difficulty concluding that there was absolutely no indication of collusion between the Crown witnesses. However, it is now my task to sift through the various conflicting elements to determine what, if anything, can be believed.

[13] In doing so, I must apply the test as set out by the Supreme Court of Canada in *R. v. S. (W.D.)*, [1994] 3 S.C.R. 521. To paraphrase, if I believe Mr. Pope or if his evidence raises a reasonable doubt, I must acquit. If I do not believe Mr. Pope and do not find that his evidence raises a reasonable doubt, I must ask myself whether, on the basis of the evidence I do accept, I am satisfied beyond a reasonable doubt of Mr. Pope's guilt.

[14] Turning first to Mr. Pope, I have difficulty in believing his version of events. On the whole, it felt contrived and convenient. He appeared to have a great deal of difficulty with continuity and consistency on cross-examination, indicative of a poorly rehearsed story.

[15] His description of events is an implausible one. He suggests that Harold was choking him with one hand, sufficient to prevent him from breathing, while knocking the cigarette out of his mouth and punching him in the face with the other hand. I would note from the photograph filed as exhibit 2 that Mr. Pope has a rather thick neck. In my view, it is unlikely Harold could exert sufficient force with one hand to cut off Mr. Pope's airways. In addition, his description of how the cigarette which was apparently in his

mouth came to burn him below the eye and on the forehead made absolutely no sense. Furthermore, if he truly could not breathe, it strikes me as odd that he would, as he suggests, attempt to break the hold on him by punching Harold in the face, rather than grabbing the hand around his neck or striking Harold's arm to break the hold. Lastly, if the fall to the ground truly resulted from Mr. Pope's ankle giving out, one would expect him to go down, pulling Harold down on top of him, rather than the other way around. On the whole, given the differences in age, apparent fitness level and state of intoxication, it seems highly unlikely that Harold would have been able to gain and maintain the upper hand on Mr. Pope as described, a description which is also inconsistent, in my view, with the injuries suffered by Harold as admitted by defence and as seen in photo 1 of exhibit 1.

[16] Mr. Pope has filed a series of eleven photographs of his injuries to substantiate his version of events. The photos do clearly depict a couple of scratches and some bruising on Mr. Pope's arms and shoulder; however, these injuries are as consistent with the efforts described by other witnesses to pull Mr. Pope off of Harold as they are with Mr. Pope's description. The most telling photo should be number 10, the photo of Mr. Pope's neck which he says show marks from Harold choking him. Unfortunately, the photo is of extremely poor quality with equally poor lighting such that it is difficult to determine what marks, if any, are on his neck. Furthermore, I would note that the photo of Mr. Pope, taken by the RCMP the day after the incident, does not appear to show any marks on his neck, nor do any of the photos show any bruising or swelling to Mr. Pope's face consistent with having been punched by Harold. Indeed, Mr. Pope's evidence that both he and Harold punched the other two to three times in the face and

head area is difficult to accept when one observes the dramatic differences between the photograph of Mr. Pope's face and that of Harold's.

[17] As a final note, I find Mr. Pope's description of his actions following the incident is also implausible. He asserts that he did not leave in an effort to evade the police, but I find it odd that his ability to extricate himself and decide to leave the residence would just happen to coincide with the threat of a phone call to the police. I also find it odd that Mr. Pope would assert that he was not at all angry when he left the residence, and that he viewed the significant assault he has described as a minor scuffle. Mr. Pope is unable to give a plausible explanation as to why, having been assaulted by several individuals he would try to get back into the residence, or, having found himself outside without shirt or jacket, he would choose to go to a friend's home rather than to his own which was located across the street. Finally, it is curious that Mr. Pope did not report the assault on him to the police, and made no mention of it when arrested the next day. While Mr. Pope is certainly entitled to stand on his right to remain silent, and I can draw no adverse inference from his choice to exercise that right, it makes little sense to me why, a month after the incident, he would tell Cst. Stelter that he was assaulted and demand the others be charged. Again, his choice to do so seems contrived and convenient.

[18] For these reasons, I find that I do not believe Mr. Pope nor does his evidence raise a reasonable doubt for me.

[19] The remaining evidence is not without its own problems making it difficult to determine what findings of fact can safely be made.

[20] Starting with Miranda, she presented as visibly angry when testifying and was often non-responsive to questions. She clearly contradicted the evidence of Cst. Stelter with respect to whether the phone call to the police was made before or after Mr. Pope left. She contradicted her own statement by testifying that Mr. Pope not only punched Harold, but kicked him as well, a detail which was not included in her statement to the police, and which is entirely inconsistent with the remaining evidence. Similarly, her assertion that Mr. Peter received a burn to his back is inconsistent with Mr. Peter's description and with photos 9 and 10 of exhibit 1 which depict a minor scrape to Mr. Peter's knee. Finally, her explanation regarding the removal of Mr. Pope's shirt and jacket – i.e. that Mr. Pope was assaulting Harold, stopped to remove his own shirt and jacket and then returned to assaulting Harold - makes absolutely no sense.

[21] I found Harold to be a similarly unreliable witness, firstly, because of his significant consumption of alcohol. In addition, his evidence of Mr. Pope knocking, entering, looking around, and leaving only to return and enter without knocking 15 minutes later, made little sense. Furthermore, Harold testified to Mr. Pope uttering threats to kill both when inside the residence and when outside trying to get back in. This contradicts Harold's statement to the police in which he made no mention of threats, and contradicts the evidence of all of the other witnesses.

[22] As a result of these concerns with reliability, I find that it would be entirely unsafe to rely on the evidence of either Miranda or Harold to support a conviction, except where corroborated by another, more reliable witness.

[23] I had significantly fewer problems with the evidence of Mr. Peter and of Nancy. Both had minor issues with their evidence. Mr. Peter had some difficulty with overall recollection and specifically with recalling that he had provided Mr. Pope's jacket, shirt and keys to the RCMP until reminded on cross-examination, and Nancy's description of how Mr. Pope grabbed her by the throat and pushing her over is somewhat implausible. However, both Mr. Peter and Nancy testified in a straightforward manner and were largely unshaken on cross-examination. My primary concern with the evidence of both is where they contradict each other. Both are consistent regarding what they observed of the assault on Harold, but they differ on whether Mr. Peter attempted to intervene. Nancy says he did not, but was pushed by Mr. Pope after he got off Harold; Mr. Peter says he did make efforts to pull Mr. Pope off Harold but was pushed away.

[24] Another troubling fact for me is the fact that none of the Crown witnesses is able to offer a rational explanation of how Mr. Pope came to lose his shirt and jacket. It is certainly not unreasonable to conclude that it must have come off during efforts to pull Mr. Pope off of Harold, but the evidence simply does not allow me to make this finding beyond a reasonable doubt.

[25] However, when I consider the entirety of the Crown's case, I am satisfied that certain facts have indeed been established beyond a reasonable doubt, particularly where the evidence of each of the civilian Crown witnesses intersects. In particular, all four witnesses are entirely consistent that Mr. Pope was sitting on top of Harold punching him repeatedly in the face. I have no difficulty finding as a fact that this did indeed occur. What is less clear, are the circumstances leading up to this altercation on the ground. Mr. Pope asserts he acted entirely in self defence.

[26] On this point, I accept that Nancy was the most credible witness regarding what occurred before, and, based on her evidence, I find that Mr. Pope started the altercation by punching Harold in the face knocking him off his chair and to the ground. I must say even if I were not able to make this finding with respect to how the altercation started, it is absolutely clear on the evidence that Mr. Pope was sitting on top of Harold punching him numerous times in the face. The behavior observed goes far beyond the permissible limits of self defence in this context and well into the realm of unreasonable force.

[27] Based on these findings, I am satisfied beyond a reasonable doubt that Mr. Pope assaulted Harold Blanchard thereby causing bodily harm. With respect to the remaining assault charges, I do accept that efforts were made to pull Mr. Pope off of Harold, and during the course of this, it is very likely that others were assaulted. However, I am of the view that the conflicting evidence is such that it is unclear what was done to whom and when. As a result, it would be unsafe, in my view, to convict on counts two through four; therefore, those charges will be dismissed.

[28] With respect to count 6, the mischief offence, photographs 5, 6 and 8 of exhibit 1 depict what appears to be a tear in the metal of the door to the Blanchard/Peter residence. The evidence suggests that this was not present before Mr. Pope tried to get back into the residence. The Crown civilian witnesses indicate they heard Mr. Pope banging, kicking or hitting the door with either a scraper or shovel. Mr. Pope says he did throw the shovel at the door. If the damage were a mere dent in the metal door, it would be easier to conclude that it was caused by hitting the door with a shovel; however, absent more, I have difficulty concluding that hitting a metal door with a plastic

shovel could result in the tear to the metal observed in the photos. For this reason, I am not satisfied that count 6 has been proven beyond a reasonable doubt. It, too, will be dismissed.

Amendment of Count 5:

[29] Having found Mr. Pope guilty of count 1, assault causing bodily harm, I must also conclude that the evidence supports a finding that Mr. Pope has breached the keep the peace condition of his peace bond; however, as he is subject to a common law peace bond rather than a peace bond issued pursuant to s. 810 of the *Criminal Code*, he clearly cannot be convicted of an offence contrary to s. 811. Accordingly, I must first decide whether to grant the Crown's application to amend count 5 to an offence contrary to s. 127.

[30] Defence argues that an Information cannot be amended to a new charge after expiry of the 6 month limitation period for laying summary conviction offences. Counsel relies on two cases from the early twentieth century cited by Ewaschuk, *Criminal Pleadings and Practice in Canada*, 2nd ed., looseleaf (Toronto: Canada Law Book) as authority for this proposition. However, in my view, these cases are distinguishable from the case at bar on the basis that both involved situations in which the original charge as framed did not denote an offence and thus was a nullity. Both cases make it clear that an error or omission resulting in a nullity cannot be cured by an amendment and a new Information must be sworn. As a result of the necessity of, in effect, starting again, the limitation period is clearly an issue.

[31] In *R. v. Guertin* (1909), 15 C.C.C. 257, a decision of the Manitoba Court of Appeal, the accused was originally charged with furnishing liquor to an interdict. At trial, the information was amended to allege that the accused had knowledge of the interdiction. Noting the 30 day limitation period for laying an information under the infringed section, the court made the following finding:

The original information alleged no offence under the Act and it became, after the amendment, a new information. The amendment having been made more than thirty days after the date of the offence, the magistrate had no jurisdiction to convict. (p.252)

[32] In the decision of *Rex v. Perron* (1922), 68 D.L.R. 392 (B.C.C.Ct.) three accused were jointly charged with taking more than the 25 fish allowable under B.C. fishery regulations. Noting that the limitation was per person such that three individuals could certainly take more than a joint total of 25 fish, the B.C. County Court noted:

If, therefore, the omission to lay out a “single, distinct, positive and definite charge” makes the proceedings not an irregularity but a nullity, I cannot help but arrive at the conclusion that where the charge as laid is no offence at all I cannot amend. (p. 124)

[33] No one has suggested, nor do I find, that count 5 as framed is a nullity. The question, rather, is whether I can substitute another charge to conform to the evidence at trial. The 1998 decision of the Ontario Court of Appeal in *R. v. Irwin* (1998), 38 O.R. (3d) 689 relied upon by the Crown, is also cited by Ewaschuk as authority for the proposition that a charge can be changed through an amendment at trial or on appeal provided there is no prejudice to the accused. *Irwin* involved a situation in which the accused in assaulting one individual caused bodily harm to another. At issue was whether the Information could be amended to substitute a charge contrary to s. 269 for

unlawfully causing bodily harm in place of the charge of assault causing bodily harm contrary to s. 267(b).

[34] In considering the power to amend contained in s. 601 of the *Criminal Code*, Doherty J. notes the importance of broad amendment powers in meeting the goals of ensuring that criminal cases are determined on their merits and of avoiding multiplicity of proceedings (paras. 9-11), and goes on to make the following comments:

[25] On a plain reading, the section contemplates any amendment which makes a charge conform to the evidence. The limits on that amending power are found, not in the nature of the change made to the charge by the amendment, but in the effect of the amendment on the proceedings, and particularly, on the accused's ability to meet the charge. The ultimate question is not what does the amendment do to the charge, but what effect does the amendment have on the accused?

[26] I see no useful purpose in absolutely foreclosing an amendment to make a charge conform to the evidence simply because the amendment will substitute one charge for another. As long as prejudice to the accused remains the litmus test against which all proposed amendments are judged, it seems unnecessary to characterize the effect of the amendment on the charge itself. If the accused is prejudiced, the amendment cannot be made regardless of what it does to the charge. If no prejudice will result from the charge, why should it matter how the change to the charge is described?

[35] I adopt the reasoning of Doherty J. in *Irwin* and conclude that a charge may indeed be amended by substituting a different charge provided there is no prejudice to the accused in the case to be met. In assessing this question, I would note that the defence has not argued any potential prejudice to Mr. Pope, nor would I find any in these circumstances.

[36] With the offence as currently charged, the Crown would be required to prove that Mr. Pope was bound by a peace bond with a condition that he keep the peace and be of

good behavior, and that he was in breach of that condition on January 2, 2012. An amendment of the charge to s. 127 would require the Crown to prove exactly the same factors. The only difference between the two charges relates to the origin of the peace bond and the authority under which it was imposed. The case to be met by Mr. Pope would not be any different nor would the consequences flowing from a conviction. As noted by Doherty J. in the *Irwin* case, “Some amendments which substitute one charge for another will amount to no more than placing a new label on exactly the same conduct” (para. 27). I find this to be one such amendment. Subject to the availability of s. 127 as an enforcement mechanism for a breach of a common law peace bond, I would grant the Crown’s application to amend count 5, by deleting “under Section 810” and substituting an offence contrary to s. 127 in place of s. 811.

Section 127 as an Enforcement Mechanism:

[37] In light of the requested amendment, I raised the issue of the conflicting case law surrounding the issue of whether s. 127 can be used as an enforcement mechanism in relation to breaches of common law peace bonds. Counsel were kind enough to address this issue in their submissions at my request.

Section 127 reads:

127(1) Every one who, without lawful excuse, disobeys a lawful court order, made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

- (a) An indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) An offence punishable on summary conviction.

[38] Not surprisingly, Crown takes the position that s. 127 is indeed available to prosecute a breach of a common law peace bond citing the lack of a statutory remedy and noting that a common law peace bond is not an order for the payment of money. Defence concedes that s. 127 is likely an available remedy, noting that it is a promise to abide by conditions resulting in an order restricting behavior, rather than an order for the payment of money.

[39] Given that counsel appear to be jointly of the view that s. 127 is available for use as an enforcement mechanism, I do not intend to do an exhaustive review of the law or the various factors to be considered with respect to the use of s. 127 for breaches of common law peace bonds. However, having raised it, it is necessary for me to address the issue at least briefly.

[40] While the weight of authority appears to favour the conclusion that s. 127 can be used to prosecute a breach of a common law peace bond (*R. v. Siemens* 2012 ABPC 116, *R. v. Musoni* (2009), 243 C.C.C. (3d) 17 (Ont.S.C.) aff'd (2009) 248 CCC 3d 487, *R. v. Palosaari* 2012 BCPC 99), there are cases which favour the opposing view, most notably *R. v. Mousseau* 2011 ONCJ 222, a decision out of the Ontario Court of Justice. In *Mousseau*, Fairgrieve J. concludes that a common law peace bond constitutes an order for payment of money and therefore s. 127 is not applicable. Citing the Supreme Court of Canada decision in *R. v. Parks*, (1992), 75 C.C.C. (3d) 287 (S.C.C.) he points to the limited nature of the “common law preventative justice power” and finds it significant that LaForest J. does not identify s. 127 as one of the mechanisms for enforcement. In addition, he notes the emphasis on the monetary aspect of a common

law peace bond. Finally, given the apparent redundancy of s. 810 and 811 and the lack of clear parliamentary intention, Fairgrieve J. determines that he cannot conclude that s. 127 was intended to apply to breaches of common law peace bonds.

[41] The *Palosaari* decision out of the B.C. Provincial Court is in sharp contrast. Relying on the Ontario Court of Appeal decision in *R. v. Gibbons* (upheld on appeal to the Supreme Court of Canada), Gove J. concludes that, notwithstanding the availability of other non-statutory remedies, including the forfeiture of the amount prescribed on the peace bond, the lack of an express statutory remedy means “[a] breach of the common law peace bond is enforceable pursuant to *Criminal Code* s. 127(1)” (para. 10).

[42] In considering these conflicting decisions, like counsel, I favour the conclusion reached by Gove J. in the *Palosaari* decision. Firstly, I am satisfied that a common law peace bond is a lawful court order. Secondly, I am simply unable to conclude that a common law peace bond amounts to “an order for the payment of money”, precluding the operation of s. 127. There is certainly a monetary aspect to common law peace bonds, and forfeiture of the prescribed amount is clearly an available remedy upon breach; however, other than the limited circumstance of a breach, the fact is the subject of a common law peace bond will not be required to make any monetary payment.

[43] Finally, like Gove J., I find the reasoning in the *Gibbons* case on somewhat analogous facts to be persuasive in relation to the issue of whether “a punishment or other mode of proceeding is expressly provided by law’ thereby precluding the use of s. 127. The *Gibbons* case involved the breach of an injunction enjoining the display of protest signs in the vicinity of specified abortion clinics. In discussing the availability of

contempt proceedings as an alternate “punishment or other mode of proceeding”, Deschamps J. noted in the Supreme Court of Canada decision (2012 SCC 28):

[5] In *Clement*, this Court held that the term “lawful order” in s. 127 (then s. 116) refers to a court order that is either “criminal or civil in nature” (p. 472). It also held that the “law” referred to in that section is statute law...

[8] On the basis of *Clement*, however, neither the specificity of the punishment nor the comprehensiveness of the procedure is determinative of whether a law satisfies the conditions for ousting the application of s. 127 of the *Cr. C.* Rather, the determination must be based on a conclusion that Parliament or the legislature intended to limit the application of s. 127 by creating an express alternative statutory response to acts amounting to contempt of court.

[44] Applying this reasoning, and noting the absence of any other express statutory remedy, it is clear that the operation of s. 127 in the case of breaches of common law peace bonds is not precluded.

[45] Accordingly, having concluded that a common law peace bond is a lawful court order that is not an order for the payment of money, and for which there is no punishment or other mode of proceeding expressly provided for by statute, I am satisfied that s. 127 is an available remedy for a breach of a common law basis.

Conclusion:

[46] Based on the foregoing conclusions, I would summarize my findings and rulings in this case as follows:

- A conviction will be entered with respect to count 1, for assault causing bodily harm contrary to s. 267(b);
- Counts 2, 3 and 4, alleging offences of common assault contrary to s. 266 will be dismissed;
- Count 6, alleging the offence of mischief contrary to s. 430 will be dismissed;
- Count 5 is amended to allege an offence contrary to s. 127; and
- A conviction will be entered with respect to count 5 as amended.

RUDDY T.C.J.