

SUPREME COURT OF BRITISH COLUMBIA FILE NO. 43177  
Kimberly Woolman v Supreme Court of British Columbia  
Appellant's Factum

**SUPREME COURT OF BRITISH COLUMBIA**

ON APPEAL FROM the order of Enter the name of the judge of the Supreme Court of British Columbia pronounced on the May 11, 2023.

BETWEEN:

**KIMBERLY WOOLMAN  
(APPELLANT)**

AND:

**SUPREME COURT OF BRITISH COLUMBIA  
(RESPONDANT)**

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**APPELLANT'S FACTUM  
KIMBERLY WOOLMAN**

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KIMBERLY WOOLMAN

Rex

[REDACTED]

Enter Name of Respondent's counsel, if any

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**CHRONOLOGY**

<b>Date</b>	<b>Event</b>
June 13, 2022	Hearing to set new trial date and oral motion to dismiss because the charges were laid 12 months after the incident was presented.
July 29, 2022	Hearing for motion and then first trial day.
Dec 12, 2022	Hearing for motion dismiss.
Dec 15, 2022	Second day of the trial.
Dec 22, 2022	Hearing for the Application to the Judge for remote access for character witness. Third and final day of the trial.
April 13, 2023	Date to hear the judgement of the trial by Judge Flewelling.

**OPENING STATEMENT**

The defendant, Ms. Kimberly Woolman, is seeking the court to overturn the guilty plea in the case of R v Woolman for the charges of 1 count of Causing a Disturbance and 2 Counts of Assault, based on errors in law regarding procedures and based on many inaccurate facts found in the decision by Judge Flewelling.

## PART 1 - STATEMENT OF FACTS

1. On April 24th, 2020, Ms. Ms. Woolman attended Save-on Foods in Campbell River, British Columbia (hereinafter referred to as BC) to purchase groceries. After concluding her shopping and as Ms. Woolman proceeded to the Cashier checkout, Ms. Woolman approached Ms. Poulton to ask what the barrier was for. Ms. Poulton said it's for social distancing to keep down congestion. Ms. Woolman's response to Ms. Poulton was "you gotta be friggin kidding me" and Ms. Woolman proceeded to walk away. This short conversation regarding the barrier lasted 6 seconds as shown on the. The entirety of the recording is 20 seconds long and shows the initial interaction between Ms. Woolman and Poulton regarding the barrier.

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony page 47 line 46 – 47 page 48, line 1 – 19, page 50 line 1 – 47, page 51 line 1 – 16**

**Reference Exhibit #33 Ms. Poulton's Witness Statement, page 4 line 37 – 46**

**Reference Exhibit #1 Canada Evidence Ac, section #11, Cross-examination as to previous oral statements**

**Reference Exhibit #6 video, at 00:06 - 00:12 timestamp.**

2. Ms. Poulton then proceeded to follow Ms. Woolman down the aisle as Ms. Woolman resumed her intention to go to the cashier to purchase her groceries. Ms. Poulton began badgering Ms. Woolman about social distancing as Ms. Woolman attempted to walk down the aisle with her grocery cart. Halfway down the aisle Ms. Woolman was forced to stop as Ms. Poulton was aggressively yelling at Ms. Woolman demanding to know if Ms. Woolman was going to obey the social distancing store policy even though there were no other shoppers in the aisle. Ms. Woolman repeatedly asked her to keep her distance and leave her alone. Ms. Woolman did not answer Ms. Poulton's questions as they were not reasonable. When Ms. Woolman did not answer Ms. Poulton's questions this aggravated Ms. Poulton. This is confirmed by Ms. Poulton's statement where she stated this "made her angry".

**Reference Exhibit #33, Witness Statement, Page 5 Lines 9 – 10**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 25 Line 10**

3. Consequently Ms. Poulton called other store associates to assist her. During the interaction Ms. Poulton remained within 2 feet of Ms. Kimberly Woolman. Ms. Woolman again walked away, and Ms. Poulton threatened that either Ms. Woolman answer her questions, or Ms. Woolman cannot purchase the groceries. You can see this supported in the video.

**Reference Exhibit # 33 Ms. Poulton's Witness Statement, Page5 line 12 - 13 line 18**

**Reference Exhibit #6 Video, 00.55 timestamp.**

4. Ms. Woolman continued to make her way to the cashier to pay for her groceries. Ms. Poulton continued to follow Ms. Woolman down the aisle and began threatening that if Ms. Woolman did not answer her question and agreed to social distance then Ms. Woolman would not be allowed to purchase her food. In the video you can see Ms. Poulton following behind Ms. Woolman in the aisle.

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 24 line 5-**

**7**

**Reference Exhibit #7 Video, 00:15 timestamp.**

5. When Ms. Woolman reaches the end of the aisle, Mr. Cleaver walks up behind Ms. Poulton and then walks around Ms. Woolman's cart and stops in front of her cart and begins pulling the cart away from her, attempting to snatch it from her hands. As of this point, Mr. Cleaver had not spoken with Ms. Poulton to determine the nature of the interaction. Ms. Poulton could not have spoken with him as Ms. Poulton was with Ms. Woolman through the entire interaction and Mr. Cleaver was not there until he arrived at the end of the aisle, shown arriving behind Ms. Poulton. show only Ms. Poulton and Ms. Woolman going down the aisle. It also shows that Mr. Cleaver is not there.

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 26 line 8 – 12**

**Reference Exhibit #33 Ms. Poulton's Witness Statement, page 20 - 22**

**Reference Exhibit #7 Video, at 00:12 timestamp.**

**Reference Exhibit #7 Video, at 00:04 timestamp.**

**Reference Exhibit #6 Video, at 00:15 timestamp.**

6. The interaction further escalated as Mr. McMuldloch arrived at the scene from behind Ms. Poulton from the front of the store. Ms. Poulton then moved from standing beside Ms. Woolman to stand beside Mr. McMuldloch. At this point, neither Mr. McMuldloch nor Mr. Cleaver have spoken to Ms. Woolman nor Ms. Poulton to determine what was going on.

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 26 line 40 - 44**

**Reference Exhibit #33 Ms. Poulton's Witness Statement, Page 5 line 30 - 31**

**Reference Exhibit #7 Video, Begin at 00:17 to 00:23 timestamp.**

**7. NO EVIDENCE TO SUPPORT MS. POULTON'S ALLEGATION THE DEFENDANT COUGHED ON HER RELATED TO COUNT 2, CHARGE OF ASSAULT UNDER SECTION 266 OF THE CRIMINAL CODE:**

- a. In Ms. Poulton's witness statement and testimony she stated that Ms. Woolman coughed on her.

**Reference Exhibit #33, Ms. Poulton's Witness Statement, Page 5 Line 7**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 24 Lines 43 - 47**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 25 Line 1**

- b. Mr. McMuldloch, Mr. Cleaver and Mr. Dawson all stated in their testimonies that they witnessed Ms. Woolman cough on Ms. Poulton. However, according to Ms. Poulton's own witness statement and testimony Ms. Poulton stated that she called Mr. Gord Dawson to come to her aid after the alleged cough. This confirms that Mr. Dawson was not there when the alleged cough occurred. Ms. Poulton's Witness Statement. In the witness statement Ms. Poulton made the following statement "Ms. Woolman got on the phone and phoned my Manager Gord cause Ms. Woolman was going to need back up for this one."

**Reference Exhibit #33, Witness Statement, Page 5, Line 7**

**Reference Exhibit #33, Witness Statement, Page 5 Lines 12 - 13**

- c. Also, in Ms. Poulton's witness statement and testimony she indicated that Mr. Sean Cleaver arrived at the scene **after** the alleged cough. She stated that Ms. Woolman had already walked away, and he came up the aisle behind Ms. Poulton. *"She would turn back around and continued to try and walk further into the store and Ms. Woolman continued again to ask her to leave the store. At this point, one of my co-workers, Sean, was -- came up behind me and saw what was happening, so he came over to help me."*

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 26, Lines 8 - 13.**

**Reference Exhibit #33, Ms. Poulton's Witness Statement, Page 5, Lines 18 - 22.**

**Reference Exhibit #7, Video, at 00:04 timestamp.**

- d. Mr. McMuldloch is seen coming down the same aisle toward Mr. Woolman, Ms. Poulton and Mr. Cleaver.

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, Page 26 line 40 - 46**

**Reference Exhibit #7 Video, at 00:17 timestamp.**

- e. In the video evidence it shows that Ms. Woolman was followed by Ms. Poulton, along with Mr. Cleaver and Mr. McMuldloch to where Mr. Weiner and Mr. Dawson was in the produce section. They were never in the meat section at the end of the aisle with Ms. Woolman and Mr. Cleaver and Mr. McMuldloch and Ms. Poulton.

**Reference Exhibit #8 Video, at start of the video.**

**Reference Exhibit #7 Video, at 00:00 to 01:13 timestamp.**

**Reference Exhibit #25, Transcripts from July 29, 2023, Poulton's Testimony, page 27, line 46 - 47 and page 28, line 1 to 2 line 21 - 23**

**Reference Exhibit #33 Poulton's Witness Statement, page 5 line 34 - 36 and page 6, line 1 - 2**

**8. VIDEO EVIDENCE SHOWS THAT THE DEFENDANT, MS. WOOLMAN WAS ASSAULTED BY STAFF SEVERAL TIMES, AND THAT MS. WOOLMAN DID NOT ASSAULT THE STAFF AT ANY TIME AS PER THE ALLEGATIONS MADE AGAINST HER OF 2 COUNTS OF ASSAULT UNDER, CRIMINAL CODE 226.**

- a. First assault against Ms. Woolman: Video #7 it shows that Ms. Woolman is being physically blocked by Mr. Cleaver who is standing in front of her holding onto her grocery cart, so she is unable to proceed down the aisle. Furthermore, two other staff members; Mr. McMuldloch and Ms. Poulton are seen in the video surrounding Ms. Woolman, trapping her against the freezers. All three of these employees are telling Ms. Woolman to leave the store in compliance, Ms. Woolman is seen taking her purse out of the cart. Ms. Woolman is seen holding onto the cart for stability, and in the video you can see that Ms. Woolman loses her balance when Mr. Cleaver attempted to pull the cart out of her hands.

**Reference Exhibit #7 Video, at 00:11 timestamp.**

**Reference Exhibit #7 Video, at is 00:49 timestamp.**

**Reference Exhibit #33, Mr. Cleaver's Witness Statement, page 4 line 22 - 23.**

**Reference Exhibit #25, Transcripts from July 29, 2023, Poulton's Testimony, page 26 line 13 -16**

**Reference Exhibit #33 Poulton's Witness Statement, Page 5 line 20 - 22**

**Reference Exhibit #28, Mr. Cleaver's Testimony, page 10 line 16 - 21**

**Reference Exhibit #7, Video, at 00:11 - 00:13 timestamp.**

- b. Mr. Cleaver in his witness statement and testimony stated that Ms. Woolman told him that she needed the cart in order to stand as she was disabled.

**Reference Exhibit #33, Mr. Cleaver's Witness Statement, Page 4, Line 29 - 31**

**Reference Exhibit #28, Mr. Cleaver's Testimony, Page 7 line 47, page 8 Line 1**

- c. Mr. Cleaver releases his grip on Ms. Woolman's cart, and you can see Ms. Woolman attempting to walk in the direction of the store exit.

**Reference Exhibit #7 Video, at 00:52 timestamp.**

- d. Second assault against Ms. Woolman: As Ms. Woolman is attempting to walk away Mr. McMuldloch grabs Ms. Woolman's grocery cart as she passes him and simultaneously Ms. Poulton kicks and pulls the cart with her foot towards Mr. McMuldloch and herself.

**Reference Exhibit #7, Video, 00:54 timestamp.**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page 74, line 10 - 12.**

- e. Ms. Woolman is seen on the video pulling the cart away from Mr. McMuldloch and Ms. Poulton, in another attempt to leave. Ms. Woolman begins walking away and all three employees; Mr. McMuldloch, Ms. Poulton, and Mr. Cleaver follow Ms. Woolman to the produce aisle and towards the exit.

**Reference Exhibit #7, Video, at 00:57 - 00:59 timestamp.**

- f. Third assault against Ms. Woolman, which is located from the front of the store looking to the back, you can see Ms. Woolman walking up the produce aisle while being followed by Mr. McMuldloch, Ms. Poulton, and Mr. Cleaver shortly behind her. At the midpoint of the aisle, we meet up with Mr. Weiner who is stocking vegetables. As Ms. Woolman reached where he was, Mr. Weiner stepped directly in front of her path blocking her from proceeding to the store exit. Ms. Woolman told Mr. Weiner that she was disabled and required the cart for assistance.

**Reference Exhibit #8 Video, at 00:00 - 00:02 timestamp.**

**Reference Exhibit #33, Mr. Weiner's Witness Statement, page 3, line 14 - 15.**

**Reference Exhibit #30, Mr. Weiner's Testimony, page 19, line 35 - 44.**

- g. Fourth assault against Ms. Woolman: When Ms. Woolman neared the exit Mr. Dawson began following Ms. Woolman. When Ms. Woolman saw Mr. Dawson approach her, Ms. Woolman stopped and told Mr Dawson that she was disabled and needed the cart to get to her car. Ms. Woolman pointed to the car parked in the handicap spot from the exit. Ms. Woolman attempts to exit the store and suddenly Mr. Dawson puts himself in front of the cart and then aggressively grabs the grocery cart in an attempt to take it from Ms. Woolman. Ms. Woolman attempted to pull it back toward her, away from Ms. Dawson not towards him and at no point did the grocery cart touch Mr. Dawson other than one when he pulled into himself. During this altercation between Mr. Dawson and Ms. Woolman neither the store security guard, nor store employees intervene to help Mr. Dawson nor Ms. Woolman. The security did not seem phased about the altercation, and at one point the security was distracted by a sign that had fallen. The Security guard is the man in the uniform with his hand in his pocket and the only one with a mask on.

**Reference Exhibit #33, Mr. Dawson's Witness statement, page 3, line 30 - 31.**

**Reference Exhibit #30, Mr. Dawson's Testimony, page 48 line 41 - 47 and page 49, line 1 - 2.**

**Reference Exhibit #9 Video, at 00:03 - 01:25 timestamp.**

**Reference Exhibit #9 Video, at 00:13 - 00:40 timestamp.**

- h. As defined under the BC Security Act store employees are not allowed to touch Ms. Woolman nor the cart. A person such as a store employee must be licensed under the BC Security Act to perform Security Duties. The Store Policy does not allow employees to apprehend nor follow suspected criminals. There were no charges laid on Ms. Woolman of theft nor attempted theft therefore it was never considered to be an issue.

**Reference Exhibit #30 Mr. Weiner's Testimony, page 29 line 10 - 28 and line 37 - 47.**

**Reference Exhibit #30 Mr. Weiner's Testimony, page 30 line 1 - 47.**

**Reference Exhibit #30 Mr. Weiner's Testimony, page 31 line 1 - 4.**

**B.C Security Service Act - prohibited employment and engagement section 27**

**PART 2 - ERRORS IN JUDGEMENT**

9. Judge Flewelling made an error in law by stating the Canadian Bill of Rights doesn't apply as it was superseded by the Charter, and she also stated that the Canadian Bill of Rights only applies to federal matters. The Charter of Rights does not supersede the Bill of Rights as stated in the section 26 of the Charter that recognizes all previous existing rights as still being in effect. Many pieces of legislation post Charter mention the Bill of Rights As well as a multitude of case post Charter which uses the Bill of Rights, Judge Flewelling did not uphold the Canadian Bill of Rights. Section 1 (a) of the (CBR) states "the right of the individual to life, liberty, security of person and the enjoyment of property, and the right not to be deprived thereof except by due process of law. These employees took away Ms. Woolman's liberty by confinement as they surrounded Ms. Woolman and prevented her from leaving. They took away her security of person. The employees not just trapped Ms. Woolman they also over and over grabbed her cart that was her mobility device and pulled it kicked it grabbed it tried to take it from her and caused her to stumble when they were all told that she needed it to walk. Liberty- the condition of being free from confinement, servitude, or forced labor. Judge Flewelling also was not correct that the CBR mirrors the charter. These are two distinct pieces of legislation. CBR Preamble- The Parliament of Canada, affirming that the Canadian Nation is founded upon the principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family and a society of free men and free institutions. No one can take our rights from us. The government does not give us our right. Judge Flewelling stated that the Canadian Bill of Rights is not applicable on the facts of this case. The fact that the employees were using force brings them under the Criminal Code of Canada, section 25 that is federal.

**Reference Exhibit #18, Canadian Bill of Rights Not Superseded by the Charter of Rights;  
Statutory Instruments Act, 1985  
Emergencies Act R.S.C., 1985  
The Charter of Rights and Freedom, section 26  
R v. Minister of Employment and Immigration, 1985, SCC  
The Queen v. Beauregard, 1986, SCC  
R. v. Andrew, 1986, BCSC  
R. v. Moser, 1992, ON CA**

**Reference Exhibit #20 Reasons for Sentence page 2 para 5, page 14, para 56 - 57**

**Reference Exhibit #25, Transcripts from July 29, 2023, Proceedings at Trial Application  
page 11 line 14 – 47, page 12 line 1 – 5**

**Reference Exhibit #25, Transcripts from July 29, 2023, Motion to Dismiss, page 10, line  
37 - 47, page 11 line 1 - 47, page 12 line 1 - 15.**

10. **JUDGE FLEWELLING ERRORED IN LAW AS SHE DISMISSED THE 12-MONTH STATUTE OF LIMITATIONS FOR CHARGES BEING LAID UNDER THE CRIMINAL CODE AND THE 18 MONTHS LIMIT TO BE REASONABLY TRIED ENSHRINED IN CASE LAW.**
- a. The incident at the Save-on-Foods took place on April 24, 2020. Ms. Woolman was not charged until November 4, 2021. That is also 19 months from the date the incident to charges being placed against Ms. Woolman.
  - b. On April 26, 2022, the courts scheduled a motion to dismiss hearing date for June 13, 2022. The motion was a motion to dismiss based on per section 786(1) of the Criminal Code which sets a limitation of 12-months from the date of the incident to lay charges on a summary offence.

When Ms. Woolman attended the motion hearing on June 13, 2022, to have her motion to dismiss heard, Ms. Woolman was prevented by Judge Flewelling from stating her motion orally. Judge Flewelling stopped Kimberly's oral presentation and shut down the hearing.

**Reference Exhibit #22, Transcripts Oral Motion to Dismiss, Proceedings to Confirm Trial date, page 1 line 31 to 47, page 7 line 16 to 31, page 8 line 12 to 33.**

**Reference Exhibit #16, Criminal Code Statute of limitations of 12-months**

- c. Ms. Woolman submitted a written motion to dismiss, based on the statute of 12-months to the crown on July 14, 2022, and this submission was acknowledged by the Judge. Ms. Woolman was mistaken and thought that the crown had said that the 12-months statute was in fact 6-months, and as a result Ms. Woolman amended the motion, changing the statute duration to 6-months. Ms. Woolman found out in court on July 29, 2022, that this was incorrect, and that the statute is in fact 12-months as per the Criminal Code of Canada. Judge Flewelling's acknowledged the 12-month limitation in the trial. Judge Flewelling dismissed upholding the 12-month statute of limitation because she stated the police could not personally serve Ms. Woolman with a summons despite a number of attempts; that the police were unable to locate Ms. Woolman even though their address was known to them as she had filed complaints regarding a long-term care home. Judge Flewelling based this decision on Cst Gray's statement that he attempted to serve Ms. Woolman on March 31, 2021. Neither the Crown nor the Judge provided Ms. Woolman a copy of this statement by Cst Gray. Ms. Woolman was also not able to cross examine Cst Gray as he was on maternity leave and did not attend the court proceedings. The crown admitted that Ms. Woolman was given notice on Dec 6, 2021.

**Reference Exhibit #14, Proof of Notifications and Service of Documents, Criminal Code of Canada**

**Reference Exhibit #16, Criminal Code Statute of Limitations of 12-months**

**Reference Exhibit #16, Transcripts Reason for Judgment, page 1, para 3, 56.**

- d. Judge Flewelling in her conviction makes a claim that Ms. Woolman when stating that her rights under section 2(c)(i) of the Canadian Bill of Rights to be informed promptly of the reason for her arrest or detention was infringed because she was not charged until 19 months after the date of the incident. She then says the "charges were laid on November 4, 2021, when the incident was April 24<sup>th</sup> 2020". Ms. Woolman was arrested on November 4, 2021. Judge Flewelling then tries to say that Ms. Woolman was referring to the date she was served with an undertaking which required her to attend court on April 24, 2020, respecting all three charges. Yet Judge Flewelling stated that the information was sworn on March 12<sup>th</sup>, 2021. There was no reason for Ms. Woolman to be in court on the day of the alleged incident of April 24<sup>th</sup>, 2020.

**Reference Exhibit #16, Statute of Limitations of 12-months, Criminal Code**

**Reference Exhibit #17, The Canadian Bill of Rights, section 2 (c) (i).**

**Reference Exhibit #18, The Canadian Bill of Rights not superseded by Charter legislation and case law:**

**Statutory Instruments Act, 1985**

**Emergencies Act R.S.C., 1985**

**The Charter of Rights and Freedom, section 26**

**R v. Minister of Employment and Immigration, 1985, SCC**

**The Queen v. Beauregard, 1986, SCC**

**R. v. Andrew, 1986, BCSC**

**R. v. Moser, 1992, ON CA**

**Reference Exhibit #19, Transcript Reason for Judgement, page 14, 56, 57.**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page 11 line 14 to 47, page 12, line 1 to 15.**

- e. Judge Flewelling disregard the statute of limitations that a trial be completed 18 months after the proceeding begin in a summary offence as stated in case law of R v Jordan and R v Ghraizi. Judge Flewelling said that the proceeding was instituted with the swearing of the information that was on March 12, 2021, however in her reason for judgement Judge Flewelling contradicts herself by stated the swearing of information was on March 23<sup>rd</sup>, 2021. The case law R v Ghraizi 2022, it solidifies the R v Jordan ruling of 18-months for reasonable time to be tried, and that it's the Crown's responsibility to manage the timeline.

**Reference Exhibit #15, Right to Be Tried Within a Reasonable Time, Criminal Code of Canada.**

**R v Jordan, 2016**

**R v Ghraizi, 2022**

**Reference Exhibit #19, Transcript Reason for Judgment, at para 56.**

11. Judge Flewelling refused to allow Ms. Woolman to establish her credibility by introducing a character witness. An accused may call witnesses who will testify to his good character as relevant to show the accused is credible or that the accused is unlikely to have committed the offence, Ms. Woolman was charged with criminal offences. These are serious charges that she was facing. This person had known Ms. Woolman for around 22 years and had lived beside her for 15 years. This witness could have testified of Ms. Woolman's character. This witness also could speak of Ms. Woolman credibility. That Ms. Woolman was unlikely to have committed the offence. This witness could have testified on how Ms. Woolman treated others and if she was liked in the community.

**Reference Exhibit #2 Character Witness, case law:**

**R v Tarrant, 1981**

**R v Cootenay, 1994**

**R v Elmosri, 1985**

**Reference Exhibit #21 Right to Make Full Answer and Defence, Criminal Notes; General Principles: the Purpose of a full answer and defence.**

**Reference Exhibit #29 Transcript of Dec 22, 2022, Proceedings at Trial 9:49:44am to 10:11:14am Page 7, line 35 - 47, page 8 line 1 - 47, page 9, line 1 - 47 and page 10, line 1 - 29.**

12. Judge Flewelling erred in fact regarding the allegations of coughing as assault.
- a. Video #7 shows that Kimberley used her sleeve to cough.
  - b. At no time do you see Ms. Woolman cough other than in her sleeve and Ms. Poulton shows no reaction to having been coughed on in the video. At no time do you see Ms. Woolman make any coughing gestures other than into her sleeve.
  - c. In none of the videos is Ms. Woolman captured making any gestures of coughing, other than when she coughed into her sleeve.

- d. In the videos that are available it shows that Ms. Poulton approached and followed Ms. Woolman alone. The only video of Ms. Woolman coughing shows that she coughed into her sleeve.
- e. Cleaver, McMuldloch, Weiner and Dawson all testified that they saw Kimberley coughing on Poulton, but the videos show they were not present during the time Poulton said Kimberley coughed on Poulton.

**Reference Exhibit #33, Ms. Poulton's witness statement page 5 line 7, line 12 – 13 line 20 -22 line 30 – 31 page 6 line 1 – 2**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page 26 line 10 – 11 line 43 - 46 page 28 line 21 - 23**

**Reference Exhibit #7 Video, at 00:35 timestamp.**

13. Judge Flewelling erred in law by citing the case law R v Pruden against Ms. Woolman as it is irrelevant. In Ms. Woolman case first, it was not established that Ms. Woolman coughed on Ms. Poulton in fact the video shows she did not. No evidence of intent was established. Ms. Woolman pleaded not guilty. In this case law of Mr. Pruden, Mens Rea was established because he had conceded that during the course of the verbal disagreement with the bar staff that he removed his face mask and coughed in the proximity to Ms. Cossette. Mr. Pruden was also intoxicated, and he had left the bar and came back. The other case law that was used in his case had all pleaded guilty. Then the fact that Mr. cleaver was not present during the interaction between Ms. Woolman and Ms. Poulton in the aisle as the video shows Mr. Cleave did not show up until after Ms. Woolman was stopped at the end of the aisle in video 2. Mr. Cleaver was not a credible witness as in his testimony he said he saw Ms. Woolman come into the store and followed her to where Ms. Poulton was at the barrier. Judge Flewelling knew very well that he was not there on the videos, nor was he seen following Ms. Poulton down the aisle.

**Reference Exhibit #6 Video, at 00:00 - 00:20 timestamp.**

**Reference Exhibit #7 Video, at 00:00 - 00:04 timestamp.**

**Reference Exhibit #33 Ms. Poulton's Witness Statement, page 5 line 7 - 21.**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page-25 line 26 - 29. 25 page-26 line 8 - 13.**

**Reference Exhibit # 13 Mens Rea Case Law;**

**R v Pruden, 2021 ABPC 266**

**R v Black, October 29, 2020; ABPC,**

**R v Topley aka Gray-Szeles; August 27, 2020; ABPC;**

**R v Tootosis, April 7, 2020, ABPC**

14. Judge Flewelling erred in fact regarding the allegations of alleged assault on Mr. Dawson. Video #9 shows that Ms. Woolman did stop her cart and is seen pointing to her car to Mr. Dawson. At this time Ms. Woolman had informed Mr. Dawson that she needed the cart to get to her car as she was disabled. The video showed Mr. Dawson going in front of Ms. Woolman's cart and grabbing it to stop her from leaving the store. Ms. Woolman Was reacting to Mr. Dawson's assault on her. Ms. Woolman pulled her cart back from him, not into him. Mr. Dawson was the one that pulled it back into him. Ms. Woolman then was trying to get the cart to go around him as she had done earlier with Mr. Weiner. Mr. Dawson on cross examination was asked if there was a policy about what he is required of him to do if someone was to shoplift. Mr. Dawson said it did not require them to do anything for they have a no chase policy we have security in the store. There was no intent to harm

Mr. Dawson or any other employees that day. Not one employee had the right to touch Ms. Woolman as they do not hold a security licence. The crown did not prove mens rea.

**Reference Exhibit #9 Video at 00:07 - 00:21 timestamp.**

**Reference Exhibit # 17, The Canadian Bill of Rights, section 1 (a).**

**Reference Exhibit #32, B.C Security Services Act.**

**Reference Exhibit #28, Mr. Dawson's Testimony, page 49 line 1 - 13. Page 56 linen 16 - 20.**

**Reference Exhibit #33, Mr. Dawson's Witness Statement, page 3, lines 29 - 30.**

**Reference Exhibit #30, Mr. Weiner's Testimony, page 29, line 6 - 47, page 30 line 1 - 47 and page 31, line 1 - 7.**

#### **15. JUDGE FLEWELLING MADE COMMENTS AND OPINIONS REGARDING MS. WOOLMAN'S DISABILITY.**

- a. Ms. Woolman was treated unequally and unfairly because the Judge continually made untrue medical opinions regarding Ms. Woolman's disabilities without any medical reference to support these statements.
- b. Judge Flewelling made the following statement when she had gone home at a recess to get her pain meds, "if Ms. Woolman could sit in the courtroom at the July appearance without any problem, so Ms. Woolman don't see why she can't today." Ms. Woolman did have difficulty in the other court appearance, and some days she cannot function at all.
- c. Ms. Woolman was in a car accident on Dec 26, 1989, that left her with the following severe injuries to – list the injuries. The car Ms. Woolman was in was hit head on with another vehicle at 80 KM an hour. Ms. Woolman's husband at the time was in a coma for three days, had multiple fractures in his face, and suffered a brain injury. The extent of Ms. Woolman's injuries from this accident:

1/ **Ms. Woolman's neck was damaged**, and she suffers chronic pain in her neck that gets significantly worse with physical activity. This affects Ms. Woolman's hands and back and causes pain in her shoulders. She also experiences migraines when the pain gets extreme.

2/ **Ms. Woolman's shoulder is damaged** that required surgery to shave the rotator cuff and clean it out as she could not use her arm when her children were little, which was extremely difficult as a single parent. As Ms. Woolman uses this arm for her cane and it is her dominant hand so the pain changes and can travel down her entire arm. It can also stop Ms. Woolman from participating in any activity due to the intensity of the pain.

3/ **Ms. Woolman has nerve damage on her entire left side** that intensifies the pain. This damage also will cause her feet to get so cold that they feel like they are frostbitten and Ms. Woolman feel that more on the right foot. Ms. Woolman will also get times where they burn.

4/ **Ms. Woolman injured her the thoracic part of my back and have a herniated disc.** This pain also changes fluctuates from a mild sensation to an intense "stabbing" pain. This also effects Ms. Woolman's stomach which impacts her ability

to eat. If my back gets cold, Ms. Woolman will get an attack that Ms. Woolman can't breathe as all the muscles tighten up around my body. The pain is unbearable, and Ms. Woolman must be medicated to manage the pain. Ms. Woolman cannot lay flat as this causes extreme pain and messes with her muscles.

**5/Ms. Woolman's pelvis was broken in 4 places and permanently dislocated.** Ms. Woolman required extensive rehabilitation in order to walk again. This causes Ms. Woolman to walk with a limp and because of the limp it effects her back and is one of the reasons why Ms. Woolman use a cane all the times. Because of this damage Ms. Woolman has constant pain and is made significantly worse by walking. Ms. Woolman is not able to walk far even with help and her walker. Ms. Woolman's cane is just for getting to her car or to get a cart or take the garbage out, short distances. When Ms. Woolman has to walk, Ms. Woolman must plan it out for it can stop her from doing something else that Ms. Woolman needs to do in that day or the following days. This also changes minute to minute a long with the pain. Ms. Woolman's legs can also give out at any time, and Ms. Woolman have fallen and has hurt herself. Ms. Woolman has not been able to walk for some time, because of a fall she has hurt knee. Falling is a danger for her as doing so can cause serious damage and never being able to walk again. At any time, Ms. Woolman can lose her ability to walk at all and that can be a day or can last for weeks. Because her pelvis is not straight it affects her sciatica nerve and pane goes down her entire leg and that can make any walking cause severe pain

**6/ Ms. Woolman broke her lower left leg** as the motor drove into the car and pinning and burning the occupants in the vehicles. This also caused nerve damage in her leg which is also permanently swollen. Ms. Woolman experiences more pain in it from walking. It also swells more by having it down and causes more pain. At home Ms. Woolman keep it up to help stop the swelling and pain. If Ms. Woolman has it down for a day or more it can take days to get the extra swelling down and pain to get better.

**7/ M. Woolman also brock her left foot.** This causes pain when Ms. Woolman walk also. Ms. Woolman was not aware she had broken her foot for approximately a week after the accident because she was in such extreme pain from the other injuries, she did not notice the broken foot. Ms. Woolman's foot is constantly swollen and in pain, and often to the point it hinders her ability to walk.

- 16.** Judge Flewelling denied Ms. Woolman's disabilities when she made this statement in court; "Miss Woolman let go of the cart, chose not to take the empty cart, and walked to her vehicle which was several steps away. The video taken of this part of the incident shows her walking away, with a limp, but without a cart to aid her and with no apparent difficulty." Judge Flewelling has no idea of how difficult it is for Ms. Woolman to walk. Judge Flewelling was undermining why Ms. Woolman could not leave without her cart when she was surrounded by the employees. Ms. Woolman made it clear to every one of them in the moment that she needed the cart to walk. The judge saw Ms. Woolman use her walker in the court room. If Ms. Woolman does not have her walker, then she uses a cane. Ms. Woolman's word should have been enough.

**Reference Exhibit #19, Transcript, Reason for Judgement, para [16] [17].**

**Reference Exhibit # 28 Transcript of Dec 15th, 2022, proceedings at trial. page-6 line 10 - 15. page-27 line 22 - 47. page-28 line 1 - 47. page-29 line 1 - 34.**

17. Judge Flewelling erred in law for the charge of causing a disturbance. It must be more than mere emotional upset or annoyance. The disturbance must be foreseeable as a consequence from the act.[1] The fact is on April 24, 2020, the crown did not meet the criteria of a disturbance under the criminal code The crown did not establish mens rea and the normal activity to the store was not interrupted. The cause for Ms. Woolman’s upset was because Ms. Woolman was clearly assaulted on April 24, 2020, as the videos showed. They had her trapped and not able to leave and then continued to assault her by grabbing her cart and pulling it from her when they knew she needed it because of her disabilities. Judge Flewelling using R v Lohnes [1992] which supports Ms Woolman’s innocence as it states “There was no evidence of a disturbance of the use of the premises in the question by anyone in the case at the bar. Appeal allowed.”

**Reference Exhibit #6 Video, at 00:00 - 00:20 timestamp.**

**Reference Exhibit #7 Video, at 00:00 - 01:13 timestamp.**

**Reference Exhibit #8 Video, at 00:00 - 00:32 timestamp.**

**Reference Exhibit #9 Video, at 00:00 - 01:25 timestamp.**

**Reference Exhibit # 13 Mens Rea Case Law;**

**Criminal Notebook**

**R v Pruden, 2021 ABPC 266**

**R v Black, October 29, 2020; ABPC,**

**R v Topley aka Gray-Szeles; August 27, 2020; ABPC;**

**R v Tootosis, April 7, 2020, ABPC**

**Reference Exhibit #19, Transcript Reason for Judgement, at para [35].**

**Reference Exhibit #32, B.C Security Services Act, section 27.**

**Reference Exhibit #34, Causing a Disturbance, case law:**

**Criminal Notebook**

**R v Lohnes, 1992, SCC**

**R v Swinkels, 2010, ONCA**

**R v Reed, 1992, BCCA**

**R v Clothier, 1975, NSCA**

**R v Osbourne, 2008, ONCJ**

**R v Shea, 2010, NSPC**

18. Judge Flewelling also made judgement that Ms. Woolman did not obey the COVID guidelines of the health department by-law that was put in place as for the time of the alleged incident of April 24<sup>th</sup>, 2020. This was social distancing. Ms. Poulton made an accusation that Ms. Woolman said she was not going to keep the social distancing and yet admits that she followed Ms. Woolman down the aisle to ask if she would keep it. Ms. Poulton also in her testimony admitted that Ms. Woolman had NOT broken the social distancing by-law. There is no proof that Ms. Woolman had disregarded social distancing. The fact is that none of these employees follow the social distancing by-law themselves as shown on every one of the videos. Judge Flewelling repeatedly told Ms. Woolman that the social distancing that she was pointing out was irrelevant and all that she was concerned about was the charges. Now the judge is using false facts against Ms. Woolman. These questions were relevant for if someone that said she was allegedly coughed on and said this was assault and was in fear of Ms. Woolman why Ms. Poulton was standing so close to Ms. Woolman. This was also to show that Ms. Woolman was reacting to what these employees were doing to Ms. Woolman. As it was them that

were causing the disturbance, not Ms. Woolman. She could not leave they had a hold of her cart and had her surrounded.

**Reference Exhibit #6, Video, at 00:00 - 00:20 timestamp.**

**Reference Exhibit #7, Video, at 00:00 - 01:13 timestamp.**

**Reference Exhibit #8, Video, at 00:00 - 00:32 timestamp.**

**Reference Exhibit #9, Video, at 00:00 - 01:25 timestamp.**

**Reference Exhibit #12, Leeway Case Law:**

**Sanzone v. Schechter, 2016 ONCA 566**

**Oh v Sunshine Village Corporation, 2016 ABPC**

**Reference Exhibit #13, Mens Rea, General Principle, Criminal Notebook.**

**Reference Exhibit #20, Transcript Reason for Sentence, page 1, para 2**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page 54, line 9 - 17, page-61 line 17 - 27, line 38 - 47, page 62 line 1 - 26 line 41 - 47, page 63, line 1 - 14, page 68 line 1 - 12.**

**Reference Exhibit #21, Right to Make Full Answer and Defence Criminal Notes;**

**General Principles: the Purpose of a full answer and defence.**

19. Judge Flewelling ignored the B.C Security Services Act in Ms. Woolman's submission. Throughout the store surveillance videos it shows that Ms. Woolman was restrained and physically repeatedly prevented from leaving the store by Ms. Poulton, Mr. Cleaver, Mr. Dawson, Mr. Weiner and Mr. McMuldloch. Ms. Woolman's cart was pulled causing her to lose balance. Ms. Woolman cart was pushed, kicked, blocked, grabbed, and twisted by these Save-on-Food employees. Ms. Woolman tried to show this in the videos, yet Judge Flewelling stated that their actions toward Ms. Woolman were irrelevant. Judge Flewelling also repeatedly interjected during Ms. Woolman's cross examination and prevented Ms. Woolman from asking relevant questions and thus Ms. Woolman's ability to compare the written statements with the oral testimony was hindered by Judge Flewelling.

**Exhibit #32, B.C Security Services Act, section 27.**

**Exhibit #17, Canadian Bill of Rights 1(a)(b)(d) 2 (e) (f).**

**Reference Exhibit #1, Canada Evidence Act, section 11- R.S.C., 1985, c. C-5, Cross-Examination as to Previous Oral Statements**

**Exhibit #39, Mr. Weiner's Testimony page 29 line 8 - 47, page 30 line 1 - 47, page 31 line 1 - 2.**

**Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's testimony page 49 line 17 - 47. page-50 line 1 - 47. page-51 line 1 - 31.**

**Exhibit #21, Right to Make Full Answer and Defence**

**R v Quintero-Gelvez, 2019, ABCA**

**R v Osolin, 1993**

**R v Switzer, [2014 ABCA 129](#) at para [5](#)**

**R v Switzer, [2014 ABCA 129](#) at para [7](#)...**

20. Judge Flewelling erred in by allowing hearsay to be accepted as evidence. Ms. Poulton stated in her testimony that there was a customer that told her that she saw Ms. Woolman cough on Ms. Poulton. However, there was no statement nor evidence presented of that customer nor of what that customer may have said to Ms. Poulton. All of the prosecutor's witnesses said they saw Ms. Woolman cough on Ms. Poulton; however, the videos show that not one of these witnesses were in the aisle to see this alleged cough. The video shows Mr. Cleaver getting involved at the end of the

aisle after Ms. Poulton had called for help when Ms. Woolman walked away from her again. Mr. McMuldloch also was not where Ms. Poulton said she was when she was allegedly coughed on by Ms. Woolman. There is no evidence on the video of Ms. Woolman coughing other than when she coughed in her sleeve and is the only time. Judge Flewelling, in her reason for Judgement, says it was at the end of the aisle where Mr. Cleaver stopped Ms. Woolman by physically grabbing Ms. Woolman's cart and trying to pull it from her. Mr. McMuldloch was the last to get involved in this section of the store. One can speculate that Ms. Poulton told Mr. Cleaver, Mr. McMuldloch and Mr. Weiner told them about the alleged cough after the fact. Flewelling also took Mr. Dawson's testimony of hearsay that store customers were happy with the way this alleged incident was handled. There is no evidence that any customers interacted with Mr. Dawson nor were there any statements provided to the crown to verify this claim. Judge Flewelling took these statements as fact without any factual evidence.

**Reference Exhibit #7 Video, at 00:00 - 00:35 timestamp.**

**Reference Exhibit #10, Hearsay Evidence, Criminal Notebook, para [1], [2], [3]**

**Reference Exhibit #19, Transcript Reason for Judgement, para [13], [24], [20], [25], [43].**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page 25, line 30 - 47.**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page 26 line 1 - 3.**

**Reference Exhibit #32, B.C Security Services Act, section 27**

**R v Pruden, 2021 ABPC 266**

**R v Black, October 29, 2020; ABPC**

**R v Topley aka Gray-Szeles; August 27, 2020; ABPC**

**R v Tootoosis, April 7, 2020, ABPC**

21. Judge Flewelling along with the crown set only one day for this trial of July 29th, 2022. Ms. Woolman had no say in how many days she would need to cross examine the witnesses as there were six of them. The judge and the crown had determined that they did not need all these witnesses. They had stated that Mr. Dawson was not needed to testify even though Mr. Dawson was one of the employee witnesses that made one of the charges against Ms. Woolman. Ms. Woolman had a right to face all the people that had made witness statements and charges against her. The judge and the crown made it clear that they would be able to finish this trial in the one day.

**Reference Exhibit #17 The Canadian Bill of Rights, section 1(b)**

**Reference Exhibit #21, Right to Make Full Answer and Defence**

**R v Quintero-Gelvez, 2019 ABCA 17**

**R v Osolin, [1993 CanLIMS](#), [1993] 4 SCR 595 at pp 663-65.**

**R v Switzer, [2014 ABCA 129](#) at para [5](#)**

**R v Switzer, [2014 ABCA 129](#) at para [7](#)...**

**Reference Exhibit #25, Transcripts from July 29, 2023, Ms. Poulton's Testimony, page-14 line 17 - 25.**

**page-16 line 18 - 24. page-16 line 27 - 47. page-17 line 1 - 47.**

**page-18 line 1 - 5.**

### PART 3 - ARGUMENT

#### 22. Cross-examination as to Previous Oral Statements

##### **Canada Evidence Act, R.S.C., 1985, c. C-5**

**11** Where a witness, on cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make the statement, proof may be given that he did in fact make it, but before that proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make the statement.

<https://laws-lois.justice.gc.ca/eng/acts/c-5/page-1.html#h-137457>

#### 23. Now Allowing to Hear Ms. Woolman's Character Witness:

##### **Regina v. Tarrant, 1981**

The use and value of character evidence has been recently reviewed and re-stated by Mr. Justice Arnup, speaking for this court in R. v. Dees (1978), (2d) 58, where he said at p. 65:

The admissibility of evidence of good character of the accused, and the use that may be made of it, was discussed by Martin J.A., in giving the Judgement of this Court in R. v. McMillan (1975), 23 C.C.C. (2d) 160 commencing at p. 167, 7 O.R. (2d) 750, 29 C.R.N.S. 191. MS. KIMBERLY WOOLMAN refer particularly to the passage:

"The relevance of evidence with respect to the accused's character is conceded, however, by the rule of evidence which permits an accused to offer evidence of his good character as the basis of an inference that he is unlikely to have committed the crime charged".

<https://www.canlii.org/en/on/onca/doc/1981/1981canlii1635/1981canlii1635.html?autocompleteStr=R%20v%20Tarrant%2C%201981&autocompletePos=1>

##### **R. v. Kootenay, 1994 ABCA**

[3] The defence called two "character" witnesses. One was a fellow employee, who had worked with the accused for about two and one-half years.

<https://www.canlii.org/en/ab/abca/doc/1994/1994abca24/1994abca24.html?autocompleteStr=R%20v%20Kootenay%2C%201994&autocompletePos=1>

##### **R. v. Elmosri, 1985**

As has already been noted, evidence of good character was presented to the jury on behalf of the appellant. This was an important part of the defence in this case. Although a casual reference was made to it by the learned trial judge in his address to the jury, he failed to instruct them as a matter of law as to the use that they could make of such evidence. The use and value of character evidence has been reviewed in many earlier Judgements of this Court and elsewhere. It is admissible. in support of the credibility of the accused and as the basis of an inference that he is unlikely to have committed the crime charged. A recent restatement of this proposition is to be found in the case of R. v. Tarrant (1981), 63 C.C.C. (2d) 385 at pp. 387-8, 34 O. R. (2d) 747, 25 C. R. (3d) 157:

<https://www.canlii.org/en/on/onca/doc/1985/1985canlii3545/1985canlii3545.html?resultIndex=1&searchUrlHash=AAAAAQARY2hhcmFjdGVyIHdpdG5lc3MAAAAAAQ&offset=342.8571472167969&highlightEdited=true>

#### 23. Establishing intention; mens rea:

R v Pruden, 2021 ABPC 266

Mens Rea was established in *R v Pruden* because the defendant admitted he intended to cough on the victim. And in all the cited case law in this case the defendants plead guilty.

[27] The Crown and the Defence in their submissions to the Court informed the Court that they were unable to find any reported trial decisions on the question as to whether a cough per se in a post-pandemic era is capable of constituting an assault pursuant to [section 266](#) of the *Criminal Code of Canada*.

[22] Mr. Pruden concedes in his *viva voce* testimony that there was a verbal dispute with respect to his request that the bar pay his winnings from his VLT game playing. Mr. Pruden agrees that he had been consuming alcohol at the time of these events. Mr. Pruden concedes that during the course of the verbal disagreement with bar staff, that he removed his face mask, and coughed in proximity to Ms. Cossette, a bar employee. Mr. Pruden concedes that he did so in the course of the verbal dispute over the payment of the VLT winnings. He agrees that he challenged Ms. Cossette with respect to the reasons for the failure payout the VLT winnings to him, with the question “What is this? Because of COVID?”.

[30] The Crown and Defence agree that while the amount of force is not material, they differ on the question as to whether the act of coughing involves an application of force. Assault under [section 266](#) of the *Criminal Code of Canada* is a general intent offence. The law requires proof on an intentional act only in the sense that the act is not done by accident or through honest mistake.

[34] In the decision of *R v Black*, October 29, 2020; ABPC, unreported; a decision of the Honourable Judge Roy issued October 29, 2020, the accused was charged with an offence under section 73(1) of the *Public Health Act*. He entered a guilty plea to that offence and admitted that he lost his temper at a bus driver, yelled at her that he had COVID, came up to the place where the bus driver was seated, put his head over the plexiglass and coughed.

[35] In the second case, *R v Topley aka Gray-Szeles*; August 27, 2020; ABPC; unreported; the Honourable Judge Shaigec accepted a guilty plea from the accused on August 27, 2020 in which the accused admitted assaulting a policer officer engaged in the execution of his duty contrary to [section 270\(1\)](#) of the *Criminal Code of Canada*. The accused admitted that he deliberately coughed in the face of the arresting RCMP officer during the period of the COVID pandemic. The accused was displaying symptoms of COVID but testing determined that he was not infected.

[36] In the third case *R v Tootosis*, April 7, 2020, ABPC, unreported; the Honourable Judge Andreassen accepted, on April 7, 2020, a guilty plea to a charge of assaulting a police officer. The accused admitted that he coughed in the arresting police officer’s face after removing his mask. <https://www.canlii.org/en/ab/abpc/doc/2021/2021abpc266/2021abpc266.html?autocompleteSt=r=R%20v%20Pruden%2C&autocompletePos=2>

#### 24. Prescribing Court Reporting Policies and Procedures:

##### Court rules act [RSBC 1996] Chapter 80 Regulations of official reporter’s court transcripts

After consultation with the Chief Justice of the Supreme Court, the Attorney General may make regulations as follows:

(a) respecting qualifications of official reporters or any class of official reporters;

(b) prescribing the functions and duties of official reporters or any class of official reporters;  
 (c) prescribing fees that are payable to official reporters or any class of official reporters by persons, including the Crown, in respect of transcripts and copies of transcripts of proceedings in all the courts in British Columbia, examinations for discovery and other services requested by those persons;

(d) respecting the form, content and delivery of transcripts.

[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96080\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96080_01)

## 25. **Submission of Hearsay Evidence from Witnesses(s):**

Hearsay evidence is any statement, either written or oral, which was made out of court, but is presented in court to prove the truth of that statement. It is a type of evidence that is generally considered inadmissible.

The hearsay rule has stated as:

Written or oral statements, or communicative conduct made by persons otherwise than in testimony at the proceeding in which it is offered, are inadmissible, if such statements or conduct are tendered either as proof of their truth or as proof of assertions implicit therein.

The definition has been addressed in several cases.

Any out-of-court statement that is adduced simply to prove the statement was made is not hearsay. The statement is admissible as long as it is relevant.

Allowing in hearsay can compromise trial fairness and the truth seeking process.

When hearsay is elicited on cross-examination it will still be inadmissible.

Hearsay

Reasons for Exclusion:

Hearsay statements are difficult to assess for trustworthiness.

Courts generally do not allow such evidence as it is generally said to be untrustworthy for several reasons:

1. The admission of such evidence lends itself to the perpetration of fraud. This is in part due to the lack of oath on the part of the source.
2. Hearsay evidence results in a decision based upon secondary and, therefore, weaker evidence, rather than the best evidence available. Related to this, there is no opportunity to cross-examine or otherwise test the evidence of the source.
3. There is no opportunity to observe the demeanour of the declarant, thus making it harder to assess the quality of the evidence.
4. The introduction of such evidence will lengthen trials.
5. These concerns include the inability to investigate "declarant's perception, memory, narration, or sincerity."

These are known as the hearsay dangers.

Additional concerns were also identified:

- a. "the declarant may have misperceived the facts to which the hearsay statement relates";
- b. "even if correctly perceived, the relevant facts may have been wrongly remembered; "
- c. "the declarant may have narrated the relevant facts in an unintentionally misleading manner; and"

- d. "the declarant may have knowingly made a false assertion. The opportunity to fully probe these potential sources of error arises only if the declarant is present in court and subject to cross-examination."

Of these dangers, the lack of contemporaneous cross-examination is the most essential defining feature.

Allowing hearsay evidence "compromise trial fairness and the trial's truth-seeking process."

<http://criminalnotebook.ca/index.php/Hearsay>

## 26. Self-Represented Litigants are Afforded Leeway:

Sanzone v. Schechter, 2016 ONCA 566:

In those circumstances, the motion judge should not have granted summary Judgment but, instead, should have focused on the moving parties' alternative relief – the dismissal of the action because the appellant had not set it down for trial by December 31, 2014, as directed by a master. Had the motion judge done so, no doubt he would have concluded that this action had reached the point where case management by a single judge was required in order to address the legitimate desire of the respondents to see the action moved along, while accommodating, in a reasonable and practical manner, the self-represented appellant's unfamiliarity with the process to enable her to present her case to the best of her ability.

<https://www.canlii.org/en/on/onca/doc/2016/2016onca566/2016onca566.html> Para [37]

Oh v Sunshine Village corporation, 2016 ABPC:

[8] Striking a claim is a step that should be taken only with great care. Given the purpose of this Court and where a pleading was not drafted by legal counsel, striking the pleading for lack of factual particulars would be unjust as it would deny the Plaintiff access to justice because of the fact that he is self-represented. In this Court, reasonable leeway must be given to self-represented parties who fail unknowingly and without malice or disrespect to the Court to follow the [Alberta Rules of Court](#). Such leeway permits access to justice without penalty to self-represented litigants for whom legal counsel is not affordable or economically reasonable.

<https://www.canlii.org/en/ab/abpc/doc/2016/2016abpc283/2016abpc283.html?searchUrlHash=AAAQAabGVld2F5IHNIbGYgcmVwcmVzZW50YXRpdmUAAAAAAQ&resultIndex=2>

## 27. Mens Rea:

### General Principles

An unlawful act cannot attract criminal liability without a sufficient level of awareness of the wrongfulness of the act. In legal terms, the accused must have sufficient *mens rea* to be guilty of a crime. This manifests itself by either an intent on the part of the accused to choose to act in the unlawfulness or a knowledge of the circumstances under which they act to be held responsible for the offence.

However, it must be kept in mind that the latin maxim *cogitationis poenam nemo patitur* ("no one suffers punishment for mere intent") sets the principle that we do not seek to punish people for their thoughts. So the awareness by itself cannot sustain a conviction without action.

### Level of Intent Not Defined

It is not uncommon that Parliament does not define the necessary *mens rea* for an offence. However, in all cases Parliament "d[oes] not intend to punish the unblameworthy." Where the text is silent the presumption is that courts must "read in the words most appropriate to require mens rea". For subjective intent, this will generally mean "knowledge, recklessness, or wilful blindness.

### **Purpose and Constitutional Foundation**

The standard as the ultimate burden of proof is "inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence." The burden should never shift to the accused.

The presumption of innocence and the criminal standard of proof are mandated given that the accused faces "grave social and personal consequences" arising from conviction.

### **Level of Certainty**

Proof beyond a reasonable doubt "it does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt."

However, belief that the accused is "probably guilty" is not sufficient and must acquit.

The burden of proof placed upon the Crown lies "much closer to absolute certainty than to a balance of probabilities." The standard is more "than proof that the accused is probably guilty" in which case the judge must acquit.

To know something with "absolute certainty" is to "know something beyond the possibility of any doubt whatsoever." This is not a standard recognized in law.

[http://criminalnotebook.ca/index.php/Beyond\\_a\\_Reasonable\\_Doubt](http://criminalnotebook.ca/index.php/Beyond_a_Reasonable_Doubt)

## **28. Proof of Notifications and Service of Documents RE: Served Charges 12 Months Post Incident: Criminal Code of Canada, Part I, General:**

### **Proof of notifications and service of documents**

**(6)** For the purposes of this Act, the service of any document and the giving or sending of any notice may be proved

**(a)** by oral evidence given under oath by, or by the affidavit or solemn declaration of, the person claiming to have served, given or sent it; or

**(b)** in the case of a peace officer, by a statement in writing certifying that the document was served or the notice was given or sent by the peace officer, and such a statement is deemed to be a statement made under oath.

**(6.1)** Despite subsection (6), the service of documents may be proved in accordance with the laws of a province relating to offences created by the laws of that province.

**(7)** Despite subsection (6) or (6.1), the court may require the person who appears to have signed an affidavit, a solemn declaration or a statement in accordance with that subsection to appear before it for examination or cross-examination in respect of the issue of proof of service or of the giving or sending of any notice.

**(8)** For greater certainty, for the purposes of this Act, if the elements of an offence contain an explicit or implicit element of communication without specifying the means of communication, the communication may also be made by a means of telecommunication.

<https://laws-lois.justice.gc.ca/eng/acts/c-46/fulltext.html>

**29. Right to Be Tried Within a Reasonable Time:  
R v Jordan, 2016**

At paragraph [5] A change of direction is therefore required. Below, we set out a new framework for applying s. 11(b). At the centre of this new framework is a presumptive ceiling on the time it should take to bring an accused person to trial: 18 months for cases going to trial in the provincial court, and 30 months for cases going to trial in the superior court. Of course, given the contextual nature of reasonableness, the framework accounts for case specific factors both above and below the presumptive ceiling. This framework is intended to focus the s. 11(b) analysis on the issues that matter and encourage all participants in the criminal justice system to cooperate in achieving reasonably prompt justice, with a view to fulfilling s. 11(b)'s important objectives.

<https://www.canlii.org/en/ca/scc/doc/2016/2016scc27/2016scc27.html?autocompleteStr=R.%20v.%20Jordan%2C%20SCC%202016&autocompletePos=1>

**R v Ghraizi, 2022**

[13] The trial judge found, and the trial Crown conceded, that no steps were taken by the Crown to address the delay resulting from either delay period. The Crown had therefore failed to meet its onus of establishing it took reasonable steps to overcome any exceptional circumstance. The summary conviction appeal judge, however, appeared to overlook that key factual finding, instead concluding that there was nothing anyone could do to have the matter rescheduled for trial between March 17 and July 31, 2020. That approach, in our view, applied an overly restrictive assessment of whether the Crown met its obligation to take reasonable steps to address the delay. Reasonable steps are not simply measured in the context of securing a new trial date. Nor is it necessary that the Crown establish the steps taken would have been successful in reducing or mitigating delay. As but one example offered, Crown counsel took no steps to try to shorten the trial by reviewing whether the evidence of two police officers could be dispensed with.

<https://canliiconnects.org/en/commentaries/89809>

**30. Canada Evidence Act, R.S.C., 1985, c. C-5**

**Cross-examination as to previous oral statements**

**11** Where a witness, on cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make the statement, proof may be given that he did in fact make it, but before that proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make the statement. <https://laws-lois.justice.gc.ca/eng/acts/c-5/page-1.html#h-137457>

**31. Court rules act [RSBC 1996] Chapter 80Chapter 80**

**Regulations of Official Reporters Court Transcripts**

**(5)** After consultation with the Chief Justice of the Supreme Court, the Attorney General may make regulations as follows:

- (a) respecting qualifications of official reporters or any class of official reporters;
- (b) prescribing the functions and duties of official reporters or any class of official reporters;
- (c) prescribing fees that are payable to official reporters or any class of official reporters by persons, including the Crown, in respect of transcripts and copies of transcripts of proceedings in all the courts in British Columbia, examinations for discovery and other services requested by those persons;

(d) respecting the form, content and delivery of transcripts.

[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96080\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96080_01)

### 32. Statute of limitations of 12months:

#### Application of Part

**786 (1)** Except where otherwise provided by law, this Part applies to proceedings as defined in this Part.

**(2)** No proceedings shall be instituted more than 12 months after the time when the subject matter of the proceedings arose, unless the prosecutor and the defendant so agree.

<https://laws-lois.justice.gc.ca/eng/acts/c-46/page-127.html#h-132629>

1. Section 786(2) of the Criminal Code creates a limitation period that currently limits the initiation of a summary conviction prosecution if more than 12 months have elapsed since the date of the alleged offence. A variety of summary conviction offences can also be found in other pieces of legislation that may include a defined limitation period. For example, in Alberta, a six-month limitation period applies to offences under the Provincial Offences Procedure Act. This blog post will use the limitation period from the Criminal Code because it is the most relevant to the criminal justice system.
2. For criminal offences, there are two avenues for a prosecution to proceed: either by summary conviction (also referred to as 'summarily') or by indictment. The limitation period prevents police from charging someone with an offence that will proceed summarily more than 12 months after the offence took place.

<https://www.dsscrimlaw.com/2020/08/15/is-there-a-statute-of-limitations-for-certain-criminal-offences-in-canada/>

**PART 4 - NATURE OF ORDER SOUGHT**

1. The appellant seeks an Order:  
That the guilty ruling against Ms. Kimberly Woolman be overturned.
2. All of which is respectfully submitted.

Dated at the City of Campbell River, Province of British Columbia, this August 21 of 2023.

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Kimberly Woolman  
**Appellant**

## APPENDICES: LIST OF AUTHORITIES

Canadian Bill of Rights, 1960, SC	10, 12, 16, 17	9, 13, 18, 20
B.C Security Services Act, 2007	12-15-16-16-	13-16-18-19
Canada Evidence Act, 1985	5, 15, 17, 18, 23	1, 18, 19, 21, 30
Criminal Code of Canada, Part I, General	22	28
Criminal Notebook, Mens Rea General Principle	17	18
Emergencies Act R.S.C., 1985	10	9
Proof of Notifications and Service of Documents	11	10(c)
R v Black, October 29, 2020, ABPC,	16	18
R. v. Andrew, 1986, SCC	10	9
R v Clothier, 1975, NSCA	15	16
R v Cootenay, 1994, SCC	11	10
R v Elmosri, 1985, ONCA	11	10
R v Ghraizi, 2022, SCC	12	10(e)
R v Jordan, 2016, SCC	12	10(e)
R v Lohnes, 1992, SCC	15	16
R. v. Moser, 1992, ONSC	10	9
R v Osbourne, 2008, ONCJ	15	16
R v Osolin, 1993, SCC	16-17	18-20
R v Pruden, 2021, ABPC	11, 14, 15, 16, 17	12, 16, 17, 18, 19, 20
R v Quintero-Gelvez, 2019, ABCA	16-17	18-20
R v Reed, 1992, BCCA	15	16
R v Shea, 2010, NSPC	15	16
Oh v Sunshine Village Corporation, 2016 ABPC	17	18
R v Swinkels, 2010, ONCA	15	16
R v Switzer, 2014 ABCA	16-17	18-20
R v Tarrant, 1981	11	9

R v Tootoosis, April 7, 2020, ABPC	16-Dec	19-Dec
R v Topley aka Gray-Szeles; 2020; ABPC;	16-Dec	19-Dec
Right to Make Full Answer and Defence, Criminal Notes; General Principles: the Purpose of a full answer and defence.	11-15-16-16-17	12-17-18-19-20
Sanzone v. Schechter, 2016 ONCA	15	17
Singh v. Minister of Employment and Immigration, 1985	10	9
Statutory Instruments Act, 1985	10	9
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