



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

HOME INVASIONS

NATURE OF DOCUMENT:	AG DIRECTIVE
FIRST ISSUED:	APRIL 3, 2000
LAST SUBSTANTIVE REVISION:	APRIL 3, 2000
EDITED / DISTRIBUTED:	SEPTEMBER 3, 2002

NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

HOME INVASIONS

Dear Crown Attorney,

April 3, 2000

As you know, home invasion robberies are on the rise in Nova Scotia and across Canada and the most vulnerable members of our society -- the elderly -- seem to be the most common target.

Nova Scotians are horrified by this trend and are demanding that effective action be taken to stop this crime.

The Government of Nova Scotia is committed to doing everything possible to eliminate home invasion robberies. I know you share that commitment. As Crown Attorneys you have skillfully and vigorously prosecuted these cases. Your representations have secured some of the stiffest sentences ever handed down in Canada for home invasions.

As Minister of Justice and Attorney General, I am proud of Nova Scotia's firm stance on this issue and I recognize the contribution your efforts have made.

We must be diligent in maintaining the momentum we've acquired and following consultation with the A/Director of Public Prosecutions, I am issuing the attached guidelines to further assist the Public Prosecution Service with the prosecution of home invasion cases.

These guidelines define a home invasion and outline the nature of sentencing in these cases. Clearly, this cannot be exhaustive given the many factors that bear upon a home invasion sentencing. These guidelines are intended to support the continuing efforts of Crown Attorneys to prosecute home invasions to the fullest extent of the law.

Yours truly,

Michael Baker, Q.C.
Attorney General

“Home Invasion” Defined

The Nova Scotia Court of Appeal in *R. v. Harris*, [2000] N.S.C.A. 7 at 30, has essentially adopted the Alberta Court of Appeal’s characterization of a home invasion robbery. *R. v. Matwij*, [1996] A.J. No. 134 (C.A.) lists the essential features of a home invasion robbery:

- A. A plan to commit a home invasion robbery (although the plan may be unsophisticated), that targets a dwelling with the intent to steal money or property, which he or she expects is to be found in that dwelling or in some other location under the control of the occupants;
- B. Arms himself or herself with an offensive weapon;
- C. Enters a dwelling, which he or she knows or would reasonably expect is occupied, either by breaking into the dwelling or by otherwise forcing his or her way into the dwelling;
- D. Confines the occupant or occupants of the dwelling, even for short periods of time;
- E. While armed with an offensive weapon, threatens the occupants with death or bodily harm; and
- F. Attempts to steal money or other valuable property.

It is to be noted that features B and E are to be given wide interpretation. That is, if a person is not armed when they enter, they may well become so armed in order to facilitate the robbery. Further, actual use of violence as opposed to mere threats of death or bodily harm, of course, fall within the essential features of a home invasion robbery.

Therefore, in determining whether a break and enter and robbery is, in fact, a home invasion, keep these basic essential features in mind with a fairly liberal interpretation as the facts may warrant.

Sentence

When preparing representations for home invasion sentencings, general principles apply. There are, however, distinct characteristics or factors which, for policy reasons, will be deemed either irrelevant, or of lesser, or greater, importance by virtue of the nature of this crime.

As with any robbery or break and enter, home invasion robberies concern themselves primarily with the sentencing principles of the protection of society through general deterrence and denunciation. As a result, certain particular characteristics of an offender

may become either irrelevant or of less relevance.

While aggravating factors in relation to any particular crime may be self-evident, the following non-exhaustive list ought to be considered when preparing sentencing representations in home invasion cases:

- whether a conspiracy existed to commit the crime
- the degree of planning and meditation
- the awareness that elderly people are in the house
- warnings or opportunities to reconsider their plan
- whether the phone lines or other means to seek help are disengaged
- a measure of violence either threatened or used
- the extent of ransacking and/or property damage
- whether the parties are masked
- whether the parties provide aid or call for aid before they leave
- the effect of the home invasion on the particular victims
- the nature of injuries suffered by the victims
- any subsequent crimes involving violence or serious property offences.
- the prevalence of home invasions in that community at that time.

The following factors may be considered as mitigating (some mitigating factors may be subject to provisos):

- cooperation with police when arrested
- early guilty pleas
- the absence of a record for a crime of violence
- measure of remorse
- the nature and timing of the guilty plea in the face of the Crown's case

The proviso in relation to these mitigating factors will depend on the facts. For example, cooperation with the police may be considered a sign of indifference as opposed to a sign of remorse. Further, it may be considered a sign of simply outlining one's involvement if a co-accused is pointing fingers at everybody. There must, of course, be a sufficient basis to question whether the cooperation is by virtue of indifference versus remorse. The early guilty pleas will have less of a mitigating factor if they are in the face of a very strong Crown case than if they are in the face of a weaker Crown case. However, the early guilty pleas, in sparing lengthy trials and victim testimony, will be given their appropriate weight.

It is interesting to note there are certain factors that will not be considered as mitigating, or at least of less weight in the sentencing process:

- the youth of the offender is not considered to be mitigating, as general deterrence is of primary importance - *R. v. Hingley* (1977), 19 N.S.R. (2d) 541 (C.A.);
- the "sad life principle" (a one-time only rehabilitative effort to end the criminal

cycle for those who have had a tragic and abusive upbringing) is not to be considered as mitigating in crimes of violence - *R. v. Hemlow*, (1996), 147 N.S.R. (2d) 1 (S.C.) *Harris (supra.)*;
- the absence of violence is not to be considered as a mitigating factor - *R. v. Fraser* (1997), 158 N.S.R. (2d) 163 (C.A.).

There is some issue as to whether the level of involvement is to be considered a mitigating factor. Our Court of Appeal in *R. v. Stephenson* (1998), 169 N.S.R. (2d) 159 (C.A.) has indicated there will be some mitigation where the accused had urged that no violence be used. In *R. v. Bernier*, [1999], B.C.J. No. 700 (S.C.), however, the British Columbia Supreme Court rejected this notion, and handed down a fourteen (14) year sentence. This appears to be adopted on page 31 of *Harris*.

Insofar as the role of rehabilitation of the accused person regarding the sentencing of home invaders is concerned, clearly it has a lesser role, given the primary sentencing principles. It is interesting to note, however, the lack of prospects for rehabilitation may warrant a more lengthy period of incarceration in order to protect the public.

In *Harris* the circumstances surrounding the accused's background (which would have otherwise substantiated a "sad life" consideration) served more to substantiate the proposition the accused was less likely to rehabilitate, despite his youth.

Range of Sentence

The range of sentence for a first-time home invasion robbery, was previously regarded as greater than six (6) to ten (10) years. This was the starting point for a first-time offender, where there is no actual physical violence. Our Court of Appeal in *Harris* has come closer to adopting an eight (8) year starting point, as outlined in *Matwiy (supra.)* by the Alberta Court of Appeal.

The general pronouncement as to the range of sentence, being six (6) to ten (10) years grouped home invasions with robberies of financial institutions. Our Court of Appeal, however, has clearly stated, repeatedly, that a robbery in a private dwelling will sanction more severe penalty than will that of a financial institution, as a starting point.

The notion of starting point, or bench mark, sentences has been adopted as helpful but not binding by the Supreme Court of Canada in *R. v. MacDonnell*, [1997] S.C.J. No. 42. The Supreme Court of Canada has stated these starting points, while a useful guide at the appellate level, do not truly outline the range of sentences. Parliament makes that determination. Parliament has determined life imprisonment is the maximum sentence for a "robbery." This must, therefore, be considered when dealing with the facts of any particular home invasion robbery.

A brief summary of the case law in Nova Scotia regarding home invasions will clearly outline

that the Crown has been vigilant in attempting to secure severe penalties. Numerous cases from the 1970s to 1984 outline very severe sentences for home invasions. In the 1990s, while sentences upheld have been relatively severe, they have been lower than those from the 1970s and 80s. With the most recent pronouncement on home invasions robberies from our Court of Appeal, namely *Harris*, the bar of the 70s and 80s appears to have been re-established.

A brief summary of the case law regarding home invasion sentences will illustrate this point:

- *R. v. Debaie* (1972), 5 N.S.R. (2d) 24 (C.A.) The Court of Appeal affirmed a sentence of 10 years for home invasion robbery where no violence was used.

- *R. v. Baillie; R. v. Zinck* (1973), 5 N.S.R. (2d) 428; (C.A.) Here, a 10 year sentence was affirmed as within the appropriate range with violence used.

- *R. v. Greely* (1978), 26 N.S.R. (2d) 122 (C.A.) A sentence of 10 years was affirmed by the Court of Appeal when no violence was used.

- *R. v. Graves* (1979), 31 N.S.R. (2d) 469 (C.A.) A 9 year sentence was affirmed as within the range of sentence for a home invasion where violence had been used.

- *R. v. Johnson* (1984), 61 N.S.R. (2d) 357 (C.A.) Here, the Court of Appeal upheld a 12 year sentence for home invasion where violence had been used.

- *R. v. Hatch* (unreported, October 22, 1997, Halifax Provincial Court, Chief Judge J.L. Batiot). A sentence of 18 years total (with 2 years deemed served for remand) was handed down for being party to numerous counts of robbery and conspiracy. The sentencing principle of totality was considered in that case.

- *Fraser, (supra.)* The Crown appealed a sentence of 3 years for a home invasion. No violence was used although there was a threat of violence. The Nova Scotia Court of Appeal substituted a term of incarceration of 6 years. This was based on the facts of this particular case.

- *R. v. Foster* (1997), 161 N.S.R. (2d) 371 (C.A.) The Crown appealed a 28 months sentence for robbery. The Nova Scotia Court of Appeal substituted a sentence of 6 years of imprisonment. The facts are somewhat distinct.

- *Stephenson, (supra.)* The defence appealed a 6 year sentence for home invasion robbery. The home invasion took place sometime previous and the accused had been in no trouble with the law since. He pleaded guilty when charged, had not entered the victim's home, cooperated with the police and had a favourable Pre-sentence Report. The Nova Scotia Court of Appeal found his role in the crime was critical and that while he was sentenced to only 6 years, it was not outside the acceptable range.

- *Harris, (supra.)* A 15 year sentence was handed down for home invasion robbery involving premeditation, warnings of consequences and sentences for home invasions, extreme use of violence, limited remorse, limited mitigation for early guilty pleas and little chance for rehabilitation.

The *Harris* decision seems to deal, in a very comprehensive fashion, with the manner in which our courts ought to approach sentences for home invasion robberies. Despite the pronouncements in *Fraser* and *Foster*, the Court of Appeal in *Harris* found the fifteen (15) year sentence for the home invasion robbery was not outside of the acceptable range. The Court of Appeal in *Harris* explicitly rejected the submission that a six (6) to ten (10) year range was established for all cases of home invasion robberies (page 24, paragraph 57). The Court of Appeal in *Harris* specifically stated the statements in *Fraser* do not settle a range for home invasion robberies of six (6) to ten (10) years. Instead one must look at the individual case and all of its circumstances (page 25, paragraph 62). Finally, the Court of Appeal found a fifteen (15) year sentence, in all the circumstances to be within the range, not manifestly excessive, and fit. Protection of the public and deterrence were reasoned to be paramount and absolutely necessary.

Communications

Crown Attorneys should advise the PPS Director of Communications when prosecuting home invasion cases, particularly those which have captured a fair amount of media coverage [see the separate administrative policy re Case Bulletins]. The Director will facilitate media interviews regarding the case. It is important that the Crown's position be included in media coverage for two reasons:

- C to assure the public that the case is being skillfully handled in the interests of public safety;
- C to convey the Crown's commitment and determination, thus helping to deter other potential offenders.