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MOCK TRIALS

# Legal Guidance R v Kaye 2020

# R v Kaye

## LEGAL GUIDANCE



# Legal Guidance for R v Kaye

## A Brief Overview

Criminal Negligence is the wanton and reckless disregard for the lives and safety of other people. Criminal Negligence Causing Death is when that disregard results in somebody's death. Within this definition, there are a number of legal factors to consider in order to determine whether the accused is guilty of the charge.

*Elements of an offence* is a term used in law to describe what the Crown must prove in order to convict somebody of a certain offence. In any case, the Crown must prove the date, time, identity of the accused, and jurisdiction. For the purposes of this mock trial, none of these elements are contested.

However, there are also elements specific to the charge of Criminal Negligence Causing Death. In order to find somebody guilty of this charge, the Crown must prove each of the following essential elements beyond reasonable doubt:

1. That the accused, AKA Morgan Kaye, did something against the law, or failed to do something that the law required them to do. In this case, the question is whether Kaye failed to adhere to the fire code provisions.
2. That in doing something against the law, or failing to do something that the law required them to do, the accused showed wanton or reckless disregard for the lives or safety of others. We will get further into what this means below. And finally:
3. That what the accused did actually caused the deceased's, AKA Carl George's, death.

## Getting into it: Steps to proving Criminal Negligence Causing Death

### Step 1 – Did the accused fail to do something the law required them to do?

The Crown must prove beyond a reasonable doubt that the accused had a legal duty to follow Fire Code requirements, and that they failed to do so. We know that the law imposes a duty on landlords to follow the Fire Code.

Therefore, first you must determine whether this duty applies to Kaye, taking all the facts of the case into consideration. Is Kaye a landlord, bound by this duty?

Second, you must determine whether Kaye failed to perform that duty. Did Kaye actually fail to follow the fire code?

Let's say you are the judge. In your judgement of this case, *unless* you are satisfied beyond a reasonable doubt both that Kaye had a legal duty to follow Fire Code requirements, and that Kaye failed to perform this duty, you must find Kaye not guilty. If you were not satisfied of either one of these things, your deliberations would be over, and Kaye would be acquitted of the charge of Criminal Negligence Causing Death.

If you are satisfied beyond a reasonable doubt that Kaye had a legal duty to Follow the Fire Code and failed to perform it, you must go on to the next question.

### Step 2 – Did the accused show a wanton or reckless disregard for the lives or safety of others?

What exactly is *wanton or reckless disregard*? To prove that the accused showed a wanton or reckless disregard for the lives or safety of others, the Crown does *not* need to prove that Kaye meant to kill or seriously harm George, or anybody else. Instead, the Crown must prove beyond a reasonable doubt:

1. that the accused's conduct showed a marked and substantial departure from the conduct of a reasonable person in the circumstances; and

2. that a reasonable person in the same circumstances would have foreseen that this conduct posed a risk of bodily harm. “Bodily harm” is any hurt or injury that interferes with a person’s health or comfort and is more than brief or minor.

In deciding what a reasonable person would have done or foreseen, you must *not* take into account the accused’s individual characteristics or experiences. That means this analysis is about the actions of the accused in relation to the facts of the situation, not about who they are as an individual. In this case, could Kaye have reasonably foreseen that their lack of compliance with the Fire Code would cause bodily harm?

Let’s put you back in the judge’s shoes. Unless you are satisfied beyond a reasonable doubt that what Kaye did or failed to do showed a wanton or reckless disregard for the lives or safety of others, you *must* find them not guilty. If you were not satisfied of this, your deliberations would be over, and Kaye would be acquitted of the charge. If you are satisfied beyond a reasonable doubt that the accused showed a wanton or reckless disregard for the lives or safety of others, you must go on to the next question.

### **Step 3 – Did The accused’s conduct cause the complainant’s death?**

To prove that the Kaye caused Paul George’s death, the Crown must prove beyond a reasonable doubt that Kaye’s actions *contributed significantly* to George’s death. A person’s conduct may contribute significantly to another person’s death even though that conduct is not only or even the main cause of death. You must consider all the evidence concerning the cause of the George’s death, in determining whether the Crown has proven that the Kaye’s conduct contributed significantly to George’s death.

Unless the judge is satisfied beyond a reasonable doubt that the accused’s conduct caused the complainant’s death, they must find the accused not guilty of Criminal Negligence Causing Death.

Considering all of this, if the judge is satisfied beyond a reasonable doubt that (1) the accused failed to do something the law required them to do, (2) the accused showed a wanton or reckless disregard for the safety of others, and (3) the accused’s conduct caused the complainant’s death, then the judge must find the accused guilty of Criminal Negligence Causing Death.

## Be Reasonable! Reasonable Doubt and the Reasonable Person

While you might think of reasonability as something that varies from person to person, in law this is not the case. Both the terms 'reasonable doubt' and 'the reasonable person' invoke a standard that is objective, not subjective.

### The Reasonable Person

Because the standard of reasonableness is objective, this means that it does not consider personal characteristics or traits. Instead, the accused is compared to a fictional 'reasonable person'. Such a person is really an ideal, focusing on how a typical person, with ordinary prudence, would act in certain circumstances. Instead of considering the individuality of the accused, the reasonable person standard considers the accused's conduct in light of what they actually know, have experienced, or have perceived. For example, what did Kaye actually know, experience, and perceive about their duties as a landlord and the state of the house? Given these factors, did Kaye act reasonably?

### Reasonable Doubt

This is a phrase you will come across in the law quite a bit. Reasonable doubt is the standard of proof required of the Crown to obtain a criminal conviction. As with the reasonable person, this is an objective standard. This means that the judge or jury must be satisfied beyond a reasonable doubt that the defendant is guilty in order to convict. It is the Crown's job to prove this. It is not up to the defence to prove the accused's innocence.

However, this doesn't mean that the defence can throw out vague or unrealistic notions just to introduce the element of doubt. Likewise, the Crown does not need to prove guilt beyond any doubt whatsoever - thus the term *reasonable*. For example, a doubt will not be considered 'reasonable' if it is based on either prejudice or sympathy - it must be logically connected to the evidence or lack of evidence. Reasonable doubt cannot be imaginary or frivolous doubt. In other words, reasonable doubt is something less than absolute certainty, but more than probable guilt. This is why the notion of reasonable doubt is inseparable from the notion of the presumption of innocence. In our criminal justice system, every defendant is presumed innocent until proven guilty, not probably guilty.

## The Mind and the Act: Mens Rea and Actus Reus

In criminal law, to find someone guilty, they must have had both a guilty mind, or mens rea, and they must have committed a guilty act, or actus reus. To establish both the actus reus and the mens rea of criminal negligence, the Crown must prove that the accused's actions amounted to a marked and substantial departure from the standard of care that a reasonable person would observe in the circumstances (R. v. M.R., 2011 ONCA 190, at paras. 28-29).

**Actus Reus** refers to the physical component, or the actual act of a crime.

Most laws tell us what not to do. However, some laws tell us what we must do. These laws create a “duty” – a legal obligation to take certain actions in particular circumstances. The existence of a duty is an exception to the norm; there is, for example, no legal duty to call 911 or intervene if you witness a house fire or a victim who is drowning (though you may feel a strong moral duty to do so). An exception to this general rule is found in sections 219 and 220 of the Criminal Code (Criminal Negligence and Criminal Negligence Causing Death). So in this case, the acts reus component is proven by establishing that Kaye *did not* do what they were legally bound to do.

**Mens Rea** refers to somebody's mental state at the time of the alleged offence. It helps us to determine whether the accused intended to commit a crime, or had knowledge that their action or inaction would cause a crime to be committed. The Ontario Court of Appeal explained the law around the mens rea component of Criminal Negligence Causing Death thusly: “The court should consider whether the accused either adverted to the risk involved and disregarded it, or failed to direct his or her mind to the risk and the need to take care at all. In most cases, the mental element can be inferred from the accused's conduct or omission” (R. v. M.R., 2011 ONCA 190, at para 30).

This means that that the accused is not innocent just because they were “not thinking” about their conduct. However, a conviction cannot occur if there is “a reasonable doubt whether a reasonable person in [the accused's] position would have been aware of the risks arising from the conduct” (R. v. Beatty, 2008 SCC 5, at para. 8). The Crown must prove that a reasonable person in all the circumstances would have foreseen a risk of bodily harm that is neither trivial nor transitory (R. v. M.R., 2011 ONCA 190, at para 30).

## Applying the Law

With your teacher and lawyer coaches, you will need to work on applying the law to the facts of the case. Remember that different witnesses may have conflicting “facts” – what one witness thinks is fact does not make it the undisputed truth.

Your opening statement and your closing arguments should argue how the law applies to the evidence. Your opening statement should outline the law and how the evidence that you anticipate the witnesses will give either establishes guilt if you are the Crown, or raises a reasonable doubt if you are defence. Then, your closing arguments should refer back to the evidence the court heard, and again put it in the context of the law.

Remember that the mock trial is really about making good arguments: whether they actually succeed in achieving a “verdict” of guilty or not guilty makes no difference to the scores.

You will likely find it helpful to do some further reading to refine your understanding of the law and how it applies to this case. Key cases are noted below. Keep a few things in mind:

- Case summaries, or “briefs”, which you can find online (even on Wikipedia), can be very helpful in explaining the key points of a legal judgment. The cases themselves can all be found on the website of the Canadian Legal Information Institute: [canlii.org](http://canlii.org).
- Legal judgments can make for dense reading, even for lawyers. Start by reading the summary at the beginning (called the “headnote”) so you know what the judgment is about and what points are relevant to this case, then read parts of the judgment itself if you think you need more detail. Judges do not always agree with each other. The majority opinion – the judgment written by the judge who most judges agreed with, is the best statement of the law. However, dissents (the view of a minority of judges) may help you understand the majority opinion by comparison.
- There is no need, and the rules do not allow, for you to reference cases by name. Simply state what you believe the law requires in the case at hand.

## Additional resources

**Key reading:** R v Singh and Singh, 2014 ONSC 4564

**Causation:** R v Nette, 2001 3 S.C.R. 488

**Foreseeability:** R v Pinsky, 1989 2 S.C.R. 979

**Wanton or Reckless Disregard:** R. v. Kerr, 2013 BCCA 506

**Mens Rea:** R v Beatty, 2008 SCC 5; R. v. M.R., 2011 ONCA 190

**Reasonable Doubt:** “What Is “Beyond A Reasonable Doubt” In Canadian Criminal Law?” by Jonathan Pyzer, July 2019. Posted on the Toronto Defence Lawyers Blog:

<https://www.torontodefencelawyers.com/blog/general-category/beyond-reasonable-doubt-canadian-criminal-law/>