

CASE NO.**VOL. NO.****PAGE**

HER MAJESTY THE QUEEN

- and -

ALLEN MARK SMALL

(Appellant)

(Respondent)

CAC171359

Halifax, N.S.

Saunders, J.A.

[Cite as: *R. v. Small*, 2001 NSCA 173]

APPEAL HEARD:

November 20, 2001

JUDGMENT DELIVERED:

December 4, 2001

SUBJECT: Criminal Proceedings. Adjournments. Judicial Discretion.

SUMMARY: The Crown appealed the respondent's acquittal on a charge of imprudent driving. At a hearing to fix the date for appeal, the summary conviction appeal court judge concluded that the Crown had not "perfected" the appeal, having failed to personally serve the respondent with a copy of the notice of appeal or file with the notice of appeal a copy of the letter (to the court of first instance) requesting a transcript of the trial. The Crown had in fact fulfilled those requirements and sought a momentary adjournment in order to retrieve the documentation from the Prothonotary's office elsewhere in the building. The judge refused and dismissed the appeal.

ISSUE: Whether the summary conviction appeal court judge erred in refusing to grant the adjournment.

RESULT: Appeal allowed. The summary conviction appeal court judge erred in law in failing to exercise his discretion judicially. He denied the Crown an opportunity to demonstrate compliance in circumstances where delay or inconvenience would have been minimal.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.