

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
HER MAJESTY THE QUEEN (Appellant) (Respondent on cross-appeal)	- and -	G. A. L. (Respondent) (Appellant on cross-appeal)
CAC 162143	Halifax, N.S.	HALLETT, J.A. CROMWELL, J.A. (Concurring by Separate Reasons)

[Cite as: **R. v. G.A.L., 2001 NSCA 29**]

APPEAL HEARD: November 23, 2001

JUDGMENT DELIVERED: February 8th, 2001

SUBJECT: **Criminal Code - Sexual Assault - Proof of Absence of Consent -
Limitations on the Defence of Honest but Mistaken Belief in Consent**

Similar Face Evidence

**Appeal from Sentence imposed by summary conviction appeal court,
s. 839 Criminal Code of Canada, R.S.C. 1985, c. C-46**

SUMMARY: L. was convicted of sexual assault and sentenced to 14 months imprisonment followed by 18 months probation. He appealed both his conviction and sentence to the summary conviction appeal court which dismissed the appeal from conviction but allowed the sentence appeal. The summary conviction appeal court varied the sentence of imprisonment by ordering: (i) that the sentence be served in the community; and (ii) that L. perform 200 hours of community service and comply with other conditions imposed.

The Crown applied for leave to appeal and appeals the sentence imposed by the summary conviction appeal court. L. applied for leave and appeals the decision of the summary conviction appeal court affirming the conviction.

The Nova Scotia Court of Appeal dismissed L.'s cross-appeal from conviction. The Court held that the summary conviction appeal court did not err in (i) dismissing L.'s assertion that the trial judge erred in admitting similar fact evidence; (ii) finding that the Crown had proven that the complainant had not consented to sexual intercourse with L.; and (iii) affirming the trial judge's decision not to allow L. to give evidence of

previous sexual conduct which he alleges took place between himself and the complainant.

The majority of the Court granted leave to the Crown to appeal the sentence imposed by the summary conviction appeal court, allowed the appeal and restored the sentence of the trial judge on the ground that the summary conviction appeal court erred in principle in failing to give appropriate deference to the sentence imposed by the trial judge. L. is now in the 14th month service of the 14 month conditional sentence. In addition, he has performed at least 180 hours of the 200 hours of community service. Under the circumstances, the majority ordered that the service of the sentence of 14 months incarceration by the trial judge be stayed. (**R. v. Proulx**, [2000] 1 S.C.R. 61) L. will be subject to the probation order for 18 months under the terms imposed by the trial judge.

With respect to the sentence appeal, Cromwell, J.A., while he agreed with the result of the majority decision, stated:

I would dismiss the Crown's application for leave to appeal. In my view, it is not necessary for the purposes of this appeal to decide whether this Court has jurisdiction with respect to the sentence appeal or, if it does, whether Hall, J. committed reversible error in varying the sentence imposed at trial.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 31 pages.</p>
