NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Taweel*, 2015 NSCA 107

Date: 20151126
Docket: CAC 430344
Registry: Halifax

Between:

Stephen Nicholas Taweel

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: pursuant to s. 486 of the Criminal Code of Canada

Judge: The Honourable Justice Jamie W.S. Saunders

Appeal Heard: June 17 and 18, 2015, in Halifax, Nova Scotia

Subject: **Sexual Assault. Similar Fact Evidence. Admissibility. Credibility. Fresh Evidence. Standard of Review.**

Summary: The appellant and the complainant had a series of sexual encounters on a beach in PEI in the summer of 1991. They again had contact in Dartmouth, Nova Scotia a few months later. The complainant was 14, and the appellant 32, at the time. Twenty-two years later the appellant was tried and convicted of having sexually assaulted her at his sister's home in Dartmouth.

At trial the Crown applied successfully to admit "similar fact evidence" concerning all of the details surrounding the many sexual encounters in PEI described by the complainant. The appellant was convicted of sexual assault in Dartmouth.

On appeal, the appellant alleged a series of errors on the part

of the trial judge including admitting the PEI evidence; improperly using that evidence in convicting the appellant for an offence said to have occurred in Nova Scotia; and applying a differential standard of scrutiny to the evidence of the defence as compared to the evidence in support of the case for the Crown. The appellant also sought to introduce fresh evidence from his sister and his brother confirming the limited time he was ever in Nova Scotia in 1991, which was said to be well worthy of belief and could be expected to have affected the result.

Held: Appeal allowed, conviction set aside, and a new trial ordered. The fresh evidence was not admitted and had no bearing on the outcome of the appeal.
While seriously questioning the decision to admit the so-called "similar fact evidence", the reversible error in this case was the improper use to which the trial judge put that evidence.
Having admitted it for the limited purpose of providing "narrative" and "context", the judge used the evidence as a means of discrediting the appellant. Effectively the judge sifted through the PEI evidence that described in copious detail events for which the appellant had never been charged, in a searching comparison of the accounts given by the complainant and the appellant, pulling out statements the judge perceived as "contradictions" and "inconsistencies". The judge then applied those findings to discredit the whole of the appellant's evidence and to find him guilty of the offence in Nova Scotia for which he had been prosecuted. Such an approach allowed the poisonous nature of this similar fact evidence to infect the judge's reasoning and conclusions, with the result that the verdict was seriously compromised.

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 48 pages.