

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
C. D. C. (Appellant)	- and -	HER MAJESTY THE QUEEN (Respondent)
<b>CAC169841</b>	Halifax, N.S.	Saunders, J.A.

[Cite as: *R v. C.D.C.*, 2001 NSCA 175 ]

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**APPEAL HEARD:** November 29, 2001

**JUDGMENT DELIVERED:** December 3, 2001

**SUBJECT:** **Fresh Evidence. Incompetent Counsel, Miscarriage of Justice. Unreasonable Verdict.**

**SUMMARY:** Appellant appealed his conviction for sexual assault arguing that the trial judge misapprehended the evidence and that the verdict was inconsistent and unreasonable. He sought leave to adduce fresh evidence in the form of hospital records alleging that his ineffective trial counsel missed an opportunity to cross-examine the attending physician or the complainant concerning inconsistencies between the complainant's testimony and that which was recorded by hospital staff, thereby denying him the constitutional right to make full answer and defence.

**ISSUE:**

1. Whether leave ought to be granted to adduce fresh evidence;
2. Whether the appellant's trial counsel was incompetent and, if so, whether her ineffectiveness prejudiced the appellant's trial;
3. Whether the trial judge misapprehended the evidence resulting in a miscarriage of justice;
4. Whether the verdict was inconsistent and unreasonable.

**RESULT:** Application for leave to introduce fresh evidence denied and appeal

dismissed.

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