

NOVA SCOTIA COURT OF APPEAL
Citation: R. v. MacIntosh, 2011 NSCA 111

Date: 20111208
Docket: CAC 338535; CAC 333361
Registry: Halifax

Between:

Ernest Fenwick MacIntosh

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: Pursuant to s. 486.4 of the *Criminal Code*

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: June 8, 2011

Subject: *Charter of Rights* – right to a trial within a reasonable period of time. Criminal Law – scope of appellate review of convictions based on errors in law, misapprehension of evidence and unreasonable verdict.

Summary: The appellant was charged in 1995 based on alleged incidents in the early 1970's of indecent assault and gross indecency. He was working in India in 1995, having been transferred there by his employer a year earlier. He was extradited from India in 2007. The appellant applied to have the charges stayed due to the 14 year delay. The judge who heard the application dismissed it, on the basis of insufficient evidence that the appellant was prejudiced by the delay. The judge also found that almost all of the delay was caused by the appellant.

The appellant was tried before a different judge who convicted

the appellant of some of the offences. The appellant complained that the trial judge misapprehended important evidence and made errors of law.

Issue: Did the judge who heard the application for a stay apply the correct principles? Did the trial judge misapprehend important evidence and otherwise err in law?

Result: The appeals from conviction are allowed. The convictions are quashed and a stay of proceedings is entered. The judge who heard the application for a stay did not apply the correct principles in his analysis. He was wrong to blame the appellant as the cause of the 14 year delay when it was the duty of the authorities to bring the appellant to trial. The appellant did nothing to hide from or hinder the authorities. The judge should have found that the appellant's right to be tried within a reasonable period of time guaranteed by s. 11(b) of the *Canadian Charter of Rights and Freedoms* had been infringed by reason of the delay. The only remedy for such infringement is a stay of proceedings.

Even if the charges were not stayed, the convictions cannot stand. The judge presiding at the appellant's trial erred in law in a number of respects. In addition, he misapprehended the evidence given by the complainants which played an essential role in his reasoning process.

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 63 pages.