

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
HER MAJESTY THE QUEEN	- and -	F. C. B.
Appellant		Respondent
C.A.C. No. 155899	Halifax	ROSCOE, J.A.

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[Cite as: R. v. F.C.B., 2000 NSCA 35]

**APPEAL HEARD:** January 27, 2000

**JUDGMENT DELIVERED:** February 23, 2000

**SUBJECT:** **Criminal Law: Disclosure, Lost Evidence**  
**Charter: s.7, Stay of Proceedings**

**SUMMARY:** In 1984, the daughter of the respondent alleged that he had sexually abused her. She gave a statement to the RCMP, but told them she did not wish to testify in court against her father. No charges were laid. In 1995 the complainant asked the police to reinvestigate her allegations and, as a result, in 1996 three charges of sexual offences between 1974 and 1983 were laid. The 1984 police file was no longer in existence. A paper purporting to be a typed copy of the complainant's original statement was found in the Halifax Attorney General's office and was disclosed to the defence. As well, the child welfare agency's file produced at the time of the original complaint was available and was disclosed.

The accused brought a motion before a Provincial Court judge for a stay of proceeding. Counsel for the respondent submitted that the unavailability of the original or a photocopy of the handwritten statement was due to unacceptable negligence and the failure of the Crown to disclose it breached the accused's right to a fair trial, or was an abuse of process, the remedy for which should be a stay of proceedings. The stay was granted. The Crown appealed.

**ISSUE:** Did the trial judge err in law in entering the stay of proceedings?

**RESULT:** Appeal allowed. New trial ordered. The trial judge erred in issuing a stay of proceedings in the absence of a finding of unacceptable negligence on the part of the police, in concluding that there was a breach of the respondent's right to make a full answer and defence and in ordering a stay of proceedings in the absence of evidence of prejudice to the respondent's right to a fair trial, or other evidence that this was one of the clearest of cases justifying a stay.

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