

CASE NO. VOL. NO.
Cite as: R. v. C.R.S., 1998 NSCA 228

C. R. S.
(Appellant)

- and -

PAGE
HER MAJESTY THE QUEEN
(Respondent)

- and -

THE QUEEN
(Appellant)

- and -

C. R. S.
(Respondent)

C.A.C. No. **143866**
143937

Halifax, N.S.

PUGSLEY, J.A.

APPEAL HEARD: September 10, 1998

JUDGMENT DELIVERED: November 23, 1998

SUBJECT: **Criminal Law - Response to Jury Questions**

SUMMARY: In response to questions from the jury during the course of deliberations, (why weren't the following people called as witnesses ?) the trial judge responded that an adverse inference could be drawn against either the Crown, or the accused, if either did not, but had the ability to call the witnesses in question provided the jury considered the absent witnesses were an important link to either of the parties' cases.

RESULT: Appeal allowed, conviction quashed, new trial ordered. The trial judge erred in leaving it to the jury to draw an adverse inference against the accused, in these circumstances, for failing to call any of the absent witnesses. The majority of the witnesses had only a peripheral involvement with the main issues and were not of sufficient importance to merit the drawing of an inference against either the accused or the Crown. The drawing of an adverse inference against a party for failing to call a witness is only permissible in selected circumstances and should be exercised with great caution. Particular caution should have been exercised in this case where the names of the witnesses were brought forward during the examination, or cross-examination, of the complainant. A reasonably competent defence counsel would not have recognized that the evidence called provided logical grounds for drawing an adverse inference against the accused. As the Court concluded that a new trial should be ordered, it was neither necessary nor desirable to decide whether the trial judge should have left it to the jury to determine whether in these circumstances an adverse inference should be drawn against the Crown for failing to call the absent witnesses.

**This information sheet does not form part of the court's decision.
Quotes must be from the decision, not this cover sheet. The full court
decision consists of 18 pages.**