

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Dowe*, 2007 NSCA 128

**Date:** 20071219

**Docket:** CAC 279500

**Registry:** Halifax

**Between:**

Her Majesty the Queen

Appellant

v.

Michael Gordon Dowe

Respondent

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**Judge:** The Honourable Justice Nancy Bateman

**Appeal Heard:** December 5, 2007

**Subject:** Appeal from acquittal - s.676(1)(a) **Criminal Code**

**Summary:** The judge acquitted the accused on a charge of break and entry where the only evidence directly implicating the accused in the crime was that of an alleged accomplice who had pled guilty but was not yet sentenced for the crime.

**Issues:** Did the judge err in requiring that evidence, to corroborate that of the accomplice, must directly implicate the accused in the crime? Did the judge further err in concluding that the prior consistent statement of the accomplice would have been admissible to corroborate his testimony of the accused's participation?

**Result:** By the majority: Appeal allowed and new trial ordered. The judge erred in both respects alleged by the Crown and, consequently, failed to properly assess the evidence of the accomplice. The Crown had met the high burden of establishing that but for the error the verdict would not necessarily have been the same. On dissent: the judge found

that the evidence as a whole did not persuade him beyond a reasonable doubt that the accused participated in the offence. He did not fail to assess the credibility of the accomplice or discount his evidence without appropriate analysis.

**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 17 pages.**