

**CASE NO.**

Cite as: R. v. Wilson, 1997 NSCA 204

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HER MAJESTY THE QUEEN

- and -

KRISTA DAWN WILSON

Appellant

Respondent

C.A.C. No. 139419

Halifax

ROSCOE, J.A.

**APPEAL HEARD:**

November 21, 1997

**JUDGMENT DELIVERED:**

November 21, 1997

**WRITTEN RELEASE OF ORAL:**

November 25, 1997

**SUBJECT:**

**Criminal Law - Charter - Right to Counsel - Legal Aid**

**SUMMARY:**

A Provincial Court judge stayed proceedings against the respondent because she had not been successful in obtaining counsel through Legal Aid. She had been charged with two counts of theft over \$5,000 and one count of theft under.

**ISSUE:**

Whether the Provincial Court judge erred in ruling that the respondent's right to a fair trial under s.11(d) of the **Charter** had been infringed or denied and whether he erred in ordering a conditional stay of proceedings as a remedy under s.24(1) of the **Charter**.

**RESULT:**

Appeal allowed, stay set aside and matter remitted to the Provincial Court. Since the respondent had not been arraigned, the Provincial Court judge did not have the jurisdiction to stay the indictable matters, nor was the proper test applied for determining whether an accused person would be denied the right to a fair trial in the absence of state funded legal assistance. That test involves, first, an assessment of the complexity of the case, considering the abilities of the accused, and secondly, an inquiry into the ability to pay for counsel.

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