

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Barton v. Nova Scotia (Attorney General)*, 2015 NSCA 34

**Date:** 20150414

**Docket:** CA 428964

**Registry:** Halifax

**Between:**

Gerald Gaston Barton

Appellant

v.

The Attorney General of Nova Scotia, representing Her Majesty  
the Queen in Right of the Province of Nova Scotia and The  
Attorney General of Canada

Respondent

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**Judge:** The Honourable Justice Duncan R. Beveridge

**Appeal Heard:** January 28, 2015, in Halifax, Nova Scotia

**Subject:** Civil litigation: claim for negligent investigation, and damages under the *Canadian Charter of Rights and Freedoms*

**Summary:** The appellant pled guilty to having sexual intercourse with a female, who was between the age 14 and 16 years, and of previous chaste character. His sentence was one year probation. Approximately 40 years later, the complainant recanted. The appellant appealed conviction. This Court quashed the conviction and entered an acquittal. The appellant then sued the RCMP for negligent investigation, and the Attorney General of Nova Scotia for malicious prosecution and breach of his *Charter* rights. The claim for malicious prosecution was abandoned at trial. The trial judge dismissed the claim against the RCMP, and the claim for *Charter* damages.

**Issues:** Did the trial judge err in finding the RCMP had not breached its duty of care; did the trial judge err in law in dismissing the claim for *Charter* damages?

**Result:** A finding by an appeal court that a conviction cannot be upheld does not equate to a finding that someone must be civilly liable. Here, the civil claim against the Attorney General of Nova Scotia was abandoned. The claim for *Charter* damages was legally and factually without merit. The trial judge committed no error in dismissing that claim. The appellant did not allege that the trial judge erred in law in how he dealt with the claim against the RCMP for negligent investigation. His sole complaint was that the trial judge had committed palpable and overriding error in finding the RCMP had not breached its duty of care in the taking of the appellant's statement. Findings of fact, including drawing, or refusing to draw particular inferences, are within the purview of trial judges. The trial judge committed no reviewable error in his findings that the statement was not falsified or that the police otherwise breached its duty of care. The appeal is accordingly dismissed.

*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 24 pages.*