

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. D.M., 2007 NSCA 80

Date: 20070706

Docket: CAC 272006

and CAC 278885

Registry: Halifax

Between:

DM

Appellant

v.

Her Majesty the Queen

Respondent

and

Her Majesty the Queen

Appellant

v.

DM

Respondent

Restriction on Publication: Pursuant to s. 486.4 of the *Criminal Code of Canada*.

Judge: The Honourable Justice Fichaud

Appeal Heard: June 1, 2007

Subject: Principled exception to hearsay rule - video statement - s. 715.1 of *Criminal Code*.

Summary: In a sexual touching prosecution the Crown offered hearsay from the child's parents of the child's statements to them. The child had made a video statement the day after the event. The video was not offered at trial. The trial judge ruled the video would be inadmissible under the rules of evidence, and this established necessity to introduce the parents' hearsay under the principled exception to the hearsay rule. Accused was convicted and appeals his convictions.

Issue: Did the trial judge err in law by ruling that the video was inadmissible under the rules of evidence?

Result: Even if the child would not adopt the video under s. 715.1 of the *Criminal Code*, the Crown could have attempted to offer the video under the principled exception. The Crown did not attempt to do so. The trial judge erred by stating the video was inadmissible. This error was the premise for her admission of the parents' hearsay. New trial ordered.

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.