

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** R. v. Lake, 2005 NSCA 162

**Date:** 20051215

**Docket:** CAC 250052

**Registry:** Halifax

**Between:**

Paul Eldon Lake

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:** The Honourable Justice Fichaud

**Appeal Heard:** November 14, 2005

**Subject:** Criminal Law - *W.(D.)* tests - trial judge's responsibility to say whether accused is disbelieved

**Summary:** Conviction by judge alone. Verdict depended on credibility. Trial judge said nothing about whether accused's denial was disbelieved.

**Issue:** Did trial decision contravene the first *W.(D.)* principle?

**Result:** Judge alone has flexibility in applying *W.(D.)* but must follow the essential principles underlying *W.(D.)* instruction. When verdict turns on credibility of accused, the failure to say anything about the accused's credibility violated the first *W.(D.)* principle. Court of Appeal ordered a new trial.

**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 11 pages.**