

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Howe*, 2015 NSCA 84

**Date:** 20150904

**Docket:** CAC 429933

**Registry:** Halifax

**Between:**

Lyle Howe

Appellant

v.

Her Majesty the Queen

Respondent

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**Restriction on Publication: Section 486 of the Criminal Code of Canada**

**Judge:** The Honourable Justice David P.S. Farrar

**Appeal Heard:** March 25, 2015, in Halifax, Nova Scotia

**Subject:** **Criminal Law. Sexual Assault. Honest but Mistaken Belief in Consent. Trial Judge's Duty to Instruct on All Defences. Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 273.2(b)**

**Summary:** The appellant was charged with sexual assault and administering a stupefying drug with intent to facilitate a sexual assault. He was convicted of sexual assault and acquitted of administering a stupefying drug. He appealed arguing that the trial judge failed to properly instruct the jury on the issue of honest but mistaken belief in consent and in failing to relate the evidence to the defence's position at trial. He also argued that the jury verdict was unreasonable having regard to the totality of the evidence and, in particular, the acquittal in relation to the stupefying drug.

**Result:** Appeal allowed, new trial ordered on the only remaining charge of sexual assault. The trial judge erred in failing to properly instruct the jury on the issue of honest but mistaken

belief in consent. There was an air of reality to the defendant's position that the complainant did and said things which led him to believe that she was consenting. On the issue of unreasonable verdict, the acquittal on the administration of the stupefying drug and the conviction on the sexual assault are not inconsistent or irreconcilable with each other.

*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 21 pages.*