

CASE NO.**VOL. NO.****PAGE**

A.C.G.

- and -

HER MAJESTY THE QUEEN

(Appellant)

(Respondent)

CAC 153871

Halifax, N.S.

BATEMAN, J.A.

[Cite as: R. v. A.C.G., 1999 NSCA 152]**APPEAL HEARD:**

December 2, 1999

JUDGMENT DELIVERED:

December 2, 1999

WRITTEN RELEASE OF ORAL:

December 3, 1999

SUBJECT: CRIMINAL LAW

SUMMARY: Young offender appeals from a conviction for sexual assault. Judge accepted complainant's evidence that she and others, including the appellant were partying at a friend's residence. Complainant went to bed but awoke to find the appellant having intercourse with her. She immediately protested and the appellant stopped. Appellant testified that he did not recall being at the party which was some two years before the incident was reported. He testified, as well, that he did not have intercourse with her.

ISSUES: Appellant says that the judge failed to consider the defence of honest but mistaken belief in consent.

RESULT: Appeal dismissed. There is no basis in the evidence of the complainant nor of the appellant to provide an air of reality to a defence of honest but mistaken belief in consent. The complainant's lack of resistance to the intercourse while asleep cannot be equated with perceived consent (**R. v. M.L.M.** (1994), 89 C.C.C. (3d) 96 (S.C.C.)) absent other equivocal action on her part. Nor is there any evidence to support the defence of drunkenness. The verdict is neither perverse nor unreasonable.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 2 pages.