

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

Cite as: R. v. Borden, 1998 NSSC 188

HER MAJESTY THE QUEEN

- and -

LARRY BORDEN

Appellant

Respondent

C.A.C. No. 147595

Halifax

CHIPMAN, J.A.

APPEAL HEARD:

September 22, 1998

JUDGMENT DELIVERED:

September 22, 1998

WRITTEN RELEASE OF ORAL:

September 24, 1998

SUBJECT:

CRIMINAL LAW - Stay of Proceedings - Stay is a remedy to be applied only in the clearest of cases to prevent an abuse of process - Failure of Provincial Court judge to give the Crown an opportunity to be heard before granting a stay

SUMMARY:

The respondent was in custody pending his trial. He was in the process of being brought from the cells in a van when the time for his trial was called by the Provincial Court judge. The Provincial Court judge waited a short period of time and then when the respondent was still not present, granted a stay without calling upon the Crown for any submission.

ISSUES:

- (1) Whether the Provincial Court judge granted the stay upon proper principles.
- (2) Whether the Provincial Court judge should have given the Crown an opportunity to be heard.

RESULT:

The Nova Scotia Court of Appeal held that a stay was a remedy to be applied only in the clearest of cases to present an abuse of process. The Provincial Court judge did not direct his mind to the principles governing the exercise of this power and he erred in granting a stay.

Moreover, the Provincial Court judge erred in not giving Crown counsel an opportunity to be heard before reaching his decision.

The stay was set aside and a new trial ordered.

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