

**CASE NO.**

**VOLUME**

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Cite as: R. v. Cain, 1998 NSCA 182

MICHAEL LESLIE CAIN

HER MAJESTY THE QUEEN

- and -

(Appellant)

(Respondent)

C.A.c. No. 145390

Halifax, N.S.

FLINN, J.A.

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APPEAL HEARD:

October 2, 1998

JUDGMENT DELIVERED:

October 6, 1998

SUBJECT:

**Criminal Law - Appellate Review of Convictions**

SUMMARY:

The appellant was convicted of all charges in a nine count Indictment. The offences involve sexual assault, procurement, confinement, intimidation and exploitation of a young female who was 18 years of age at the time of six of these offences in 1988. The appellant appeals these convictions. He claims that there were witnesses that he was unable to call at the trial; that he was not given proper disclosure, including counselling records; that he was unfairly treated, being the only person charged with these offences.

RESULT: Appeal dismissed.

1. The appellant was fully aware of his responsibility to have his witnesses present for trial. The trial judge gave the appellant every opportunity, including a possible adjournment, to ensure that the appellant's witnesses testified. The appellant did not take advantage of this opportunity at trial and, therefore, now has no complaint.
2. The appellant did not raise any issue of disclosure, or counselling records, at the trial; nor is there anything before the Appeal Court to show that any lack of disclosure caused prejudice to the appellant.
3. The appellant was the motivating force, and dominant mind, behind these offences. Further, it is a matter of prosecutorial discretion as to who is charged with an offence. The courts will not interfere unless there is an extreme abuse of process. (**R. v. Power**, 89 C.C.C. (3d) 1 (S.C.C.))
4. On the whole of the evidence, the appellant's conviction was a verdict which a properly instructed jury, acting judicially could reasonably have rendered (**Yeboes v. The Queen** (1987), 36 C. C.C. (3d) 417 (S.C.C.))

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