

**CASE NO.**

**VOL. NO.**

**PAGE**

KEVIN BERNIER

HER MAJESTY THE QUEEN

- and -

(Appellant)

(Respondent)

CAC 153877

Halifax, N.S.

**BATEMAN, J.A.**

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Cite as: R. v. Bernier, 1999 NSCA 182

**APPEAL HEARD:**

June 3, 1999

**JUDGMENT DELIVERED:**

June 9, 1999

**SUBJECT:**

**Admission of expert evidence relevant to disposition of the accused to commit the offence charged.**

**SUMMARY:**

The adult accused was convicted of sexually assaulting his 10 year old neighbour. At trial, defence counsel sought to call evidence from an expert witness to the effect that the accused was neither a paedophile nor a sexual deviant and therefore was unlikely to have committed the offence. Trial judge ruled that the evidence was inadmissible.

**ISSUES:**

Did the judge err in refusing to allow the evidence?

**RESULT:**

Appeal dismissed. Consistent with the direction of the Supreme Court of Canada in **R. v. Mohan**, an accused may only tender expert evidence of disposition in limited circumstances. The admissibility of the evidence is a question of law to be decided by the trial judge. Here defence counsel, rather than calling the expert to testify on the *voir dire* presented only "will say" submissions. The submissions did not contain information sufficient to meet the **Mohan** test. Accordingly, the judge did not err in rejecting the evidence.

**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 10 pages.**