

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

HER MAJESTY THE QUEEN
(Appellant)

- and -

D. W. H.
(Respondent)

CAC154104

Halifax, N.S.

Pugsley, J.A.

[Cite as: R. v. D.W.H., 1999 NSCA 126]

Editorial Notice

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APPEAL HEARD:

September 28, 1999

JUDGMENT DELIVERED:

October 27, 1999

SUBJECT: Criminal Law - Stay of Proceedings

SUMMARY: The respondent was charged on April 11, 1997, that he committed a sexual assault upon the female complainant on April 10, 1997. The judge concluded that the respondent's right to be tried within a reasonable time had been breached, and the appropriate remedy was a stay of proceedings under s. 24(1) of the **Charter**. He determined that the passage of time from the date of charge, April 11, 1997, to the commencement of trial, on October 6, 1997, was reasonable, but that the delay from October 6, 1997, to January 23, 1998, was attributable to court staff. He also determined that the delay from January 23, 1998, to January 21, 1999, was attributable to the refusal of the original trial judge to hear the trial.

RESULT: Appeal allowed. The judge erred when he determined the initial delay of the trial from October 6, 1997, to January 23, 1998, was attributable to the court staff. The delay arose primarily because the respondent's trial brief was not addressed to, or delivered to, the judge before whom the trial would proceed.

The judge further erred when he determined that the delay from January 23, 1998, to January 21, 1999, was attributable to the refusal of the trial judge to continue as trial judge to hear the trial. That delay arose because of waiver, or respondent-caused delay.

The trial judge further erred in concluding that the evidence established the respondent had suffered actual prejudice arising from the delay.

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 22 pages.