

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. MacKenzie*, 2004 NSCA 10

Date: 20040127

Docket: CAC 200903

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Nicole Marie MacKenzie

Respondent

Judge: Fichaud, J.A.

Appeal Heard: December 2, 2003

Subject: Remedy for failure to notify unrepresented accused of right to French trial under s. 530(3) of the **Criminal Code**.

Summary: Provincial Court did not notify unrepresented accused of right to request French trial under s. 530(3) of **Criminal Code**. Supreme Court overturned the conviction, held there was a breach of ss. 15, 16 and 19 of the Charter and issued a stay. Court of Appeal set aside the stay and ordered new trial.

Issue: Was there a breach of the Charter? What is the remedy?

Result: Section 530(3) is mandatory. Failure to notify breaches the provision. The breach of s. 530(3) did not violate ss. 15, 16 and 19 of the Charter and did not invoke s. 24(1) of the Charter.

A stay is available if there is an abuse of process at common

law or a breach of s. 7 of the Charter. Neither occurred here. A stay is appropriate only when the impugned conduct would continue into the future without a stay. There was no evidence that this would occur.

The stay was set aside and a new trial was ordered.

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 38 pages.