

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. R.E.W., 2007 NSCA 50

Date: 20070430

Docket: CAC 269809

Registry: Halifax

Between:

R. E. W.

Appellant

v.

Her Majesty The Queen

Respondent

Restriction on Publication: s. 486.4 (1) **Criminal Code**

Judge: The Honourable Justice Elizabeth Roscoe

Appeal Heard: March 26, 2007

Subject: **Criminal Law, sexual assault,**
Evidence: prior consistent statement
Jury Charge: comment by judge on credibility,
misstatement of the evidence

Summary: The appellant was convicted after a jury trial of sexual assault of his 12 year old niece. He appealed his conviction and his sentence.

Issues: Did the judge err by admitting evidence of a prior consistent statement, by commenting unfairly on the credibility of a witness in the jury charge and by refusing to correct a misstatement of the evidence in the charge to the jury?

Result: Appeal allowed. New trial ordered. The prior consistent statement was not admissible. It was not part of the narrative. The comment on the credibility of the witness was, in the circumstances, unfair. The misstatement of the evidence should have been corrected because it was important to the theory of the defence. While any one of these errors may not by itself have been sufficient to order a

new trial, given the cumulative effect of the errors, it was not a case where the curative provisions of s. 686 of the **Criminal Code** should be applied.

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 16 pages.