

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Deveau*, 2011 NSCA 85

Date: 20110922

Docket: CAC 342885

Registry: Halifax

Between:

Tina Deveau

Appellant

v.

Her Majesty the Queen

Respondent

Judge:

The Honourable Justice Joel E. Fichaud

Appeal Heard:

September 19, 2011, in Halifax, Nova Scotia

Subject:

Section 253(1) of the **Criminal Code**

Summary:

The accused, charged with impaired driving, made a Charter motion at the outset of her trial. The Crown had given proper disclosure for the charges. But the Crown did not commit to calling any evidence for its response to the Charter motion until after the Crown heard the Defence's evidence for that motion. The trial judge said the Crown's failure to give pre-motion notice of its evidence for its response to the motion was procedurally unfair and estopped the Crown from calling evidence in response to the Defence's motion. The judge allowed the Defence's Charter motion and acquitted. The Crown appealed to the Supreme Court of Nova Scotia as Summary Conviction Appeal Court (SCAC). The SCAC allowed the appeal and ordered a new trial before a different judge. The accused appealed to the Court of Appeal.

Issue:

Did the SCAC err by overturning the acquittal and

ordering a new trial?

Result:

A respondent to a motion is entitled to hear the applicant's evidence for the motion before committing to its own evidence in response to that motion. There is no principle that estops a respondent to a motion from calling evidence in those circumstances. The applicant to the motion may, in appropriate circumstances, either seek an adjournment or call rebuttal evidence. The SCAC did not err by overturning the acquittal and by ordering a new trial. The Court of Appeal granted leave to appeal but dismissed the appeal.

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 4 pages.