

CASE NO. VOL. NO. PAGE  
Cite as: R. v. Keating, 1997 NSCA 135

HER MAJESTY THE QUEEN (Appellant) - and - KENNETH K. KEATING (Respondent)

C.A.C. No. 135514 Halifax, N.S. BATEMAN, J.A.

APPEAL HEARD: May 21, 1997

JUDGMENT DELIVERED: May 29, 1997

SUBJECT: Appointment of Counsel

SUMMARY: The accused, charged with sexual assault, asked the Court to appoint state funded counsel. Trial judge concluded that due to the complexity of the matter the accused could not receive a fair trial without the assistance of counsel. He further concluded that the accused could not afford counsel and accepted that he did not qualify for legal aid assistance. The judge stayed the charges against the accused until funded counsel was made available by the Province. Crown appealed.

ISSUE: Did the judge err in ordering the appointment of funded counsel?

RESULT: Appeal allowed. Stay set aside. A stay is a remedy of last resort, only to be granted in the clearest of cases. It is tantamount to an acquittal. Here, the trial judge did not make an inquiry sufficient to enable him to conclude that the accused required funded counsel to receive a fair trial, nor, in these circumstances, even should counsel be required, was his inquiry into the ability of the accused to retain counsel sufficient.

**This information sheet does not form part of the court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 22 pages.**