

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Thompson*, 2018 NSCA 13

Date: 20180215

Docket: CAC 456036

Registry: Halifax

Between:

Claude Thompson

Appellant

v.

Her Majesty the Queen

Respondent

and

The Coalition of the HIV & AIDS Legal Clinic Ontario (HALCO),
The Canadian HIV/AIDS Legal Network, and the Coalition des Organismes
Communautaires Québécois Contre le SIDA (COCQ-SIDA)

Intervenors

Restriction on Publication: s. 486.4 Criminal Code

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: October 12, 2017, in Halifax, Nova Scotia

Subject: Criminal law: vitiation of consent by failure to disclose HIV-positive status

Summary: The appellant is HIV-positive. He was charged with two counts of aggravated sexual assault in relation to two complainants. Neither complainant contracted HIV. The trial judge rejected the appellant's evidence that he had told the complainants of his status and had used condoms on both occasions. However, the trial judge was not satisfied that there was a realistic possibility of HIV transmission. She acquitted the appellant of aggravated assault. Nonetheless, the trial judge found that the complainants had suffered bodily

harm in the form of psychological harm. She convicted the appellant of the lesser and included offences of sexual assault causing bodily harm and sentenced him to 30 months' incarceration.

Issues: Can psychological harm by non-disclosure of HIV-positive status vitiate consent to sexual activity?

Result: The complainants fully consented to the sexual activity. The sole path to vitiate their consent due to fraud is by proof of deceit and deprivation. Deceit is made out by knowing non-disclosure of HIV-positive status; deprivation, by actual harm (by transmission of the virus) or exposing the complainants to realistic possibility of HIV transmission. The trial judge found that the circumstances here negated a realistic possibility. Psychological harm in the absence of a realistic possibility of HIV transmission cannot vitiate consent. Because the Crown cannot negate consent, convictions for any lesser and included assault offence is simply not available. The convictions were quashed and acquittals entered.

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 13 pages.