

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Hussien*, 2020 NSCA 58

**Date:** 20200910

**Docket:** CAC 489081

**Registry:** Halifax

**Between:**

Mostafa M. Y. Hussien

Appellant

v.

Her Majesty the Queen

Respondent

|  |
|--|
| <b>Restriction on Publication: s. 486 of the Criminal Code</b> |
|--|

**Judges:** Beveridge, Farrar and Bourgeois, JJ.A.

**Appeal Heard:** September 10, 2020, in Halifax, Nova Scotia

**Held:** Appeal allowed, per reasons for judgment of Beveridge, J.A.;  
Farrar and Bourgeois, JJ.A. concurring

**Counsel:** Rame Katrib, for the appellant  
Jennifer MacLellan, Q.C., for the respondent

## **Order restricting publication — sexual offences**

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

**Reasons for judgment (orally):**

[1] A trial judge convicted the appellant of sexual assault and unlawful confinement and imposed two years' incarceration with various ancillary orders.

[2] The appellant appealed, seeking a new trial. He was released on a recognizance with conditions pending the outcome of the appeal. The panel was scheduled to hear the appeal on September 10, 2020.

[3] On June 23, 2020, the Crown wrote to the Registrar conceding that the appeal should be allowed and a new trial ordered. No details were provided. On June 24, 2020, the Crown provided details.

[4] It appears that the Crown is in possession of two records pertaining to the complainant. It advised appellant's counsel on June 22, 2020 these records contained information that was "likely relevant". Had the existence of the records been known to the appellant, he could have brought an application to compel production pursuant to the so-called *Mills* regime (ss. 287.1-278.91 of the *Criminal Code*).

[5] The Crown apprehends that trial fairness concerns are in play by the failure of trial Crown to provide notice to the appellant pursuant to s. 278.2(3).

[6] In these circumstances, we agree. The conviction is quashed and a new trial is ordered. As a consequence, the sentence imposed and various ancillary orders are vacated.

[7] The parties agree that the appellant ought to be released pending his new trial on essentially the same terms that governed his liberty prior to sentence—a simple release order with standard conditions. We leave it to the parties to make the necessary arrangements for an order to that effect to be issued by a single judge of the Court pursuant to s. 679(7.1) of the *Criminal Code*.

Beveridge, J.A.

Concurred in:

Farrar, J.A.

Bourgeois, J.A.