

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Downey*, 2013 NSCA 101

**Date:** 20130912

**Docket:** CAC 405797

**Registry:** Halifax

**Between:**

Samuel Otis Downey

Appellant

v.

Her Majesty the Queen

Respondent

**Restriction on Publication:** 486 of the **Criminal Code**

**Judge:** The Honourable Justice David P.S. Farrar

**Appeal Heard:** May 28, 2013

**Subject:** **Criminal Law. Sexual Assault. Assessment of Evidence.**

**Summary:** The appellant was convicted of sexual assault. At the time of the appeal he had not yet been sentenced. During the trial judge's assessment of the evidence, he presumed the complainant's evidence was true unless contradicted.

The appellant appealed arguing that the trial judge improperly assessed the evidence of the complainant which led him to conclude she was credible.

**Issues:** Did the trial judge err in his assessment of evidence?

**Result:** Appeal allowed. The trial judge's presumption that the complainant's evidence was true unless contradicted was an error in law which infected his assessment of the complainant's credibility. New trial ordered.

*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 8 pages.*