

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Attorney General) v. B.M.G.*, 2007 NSCA 120

Date: 20071211

Docket: CA No. 278152

Registry: Halifax

Between:

Attorney General of Nova Scotia

Appellant

(Respondent by cross-appeal)

v.

B.M.G.

Respondent

(Appellant by cross-appeal)

Restriction on publication: pursuant to s. 486.3 of the **Criminal Code** on the name of the respondent and any information leading to identity by publishing names of witnesses or reference to residence that would lead to identity of the respondent.

Judge: The Honourable Justice Thomas Cromwell

Appeal Heard: September 19, 2007

Subject: Vicarious liability – damages for sexual assault

Summary: B.M.G. was sexually assaulted on several occasions by a probation officer employed by the Province. B.M.G. sued the Province for damages. The judge found that the Province had not been negligent and had not breached any fiduciary duty to B.M.G. but found the Province was vicariously liable for the probation officer's wrongful acts. The judge awarded \$125,000 non-pecuniary (including aggravated) damages,

\$500,000 in past and future income loss, interest and costs. The Province appealed the finding of vicarious liability and the assessment of damages. B.M.G. cross-appealed the dismissal of his claims in negligence and breach of fiduciary duty.

Issues: On the appeal, the issues were whether the judge erred in finding the Province vicariously liable, in admitting and in his assessment of certain expert testimony and in his assessment of damages. On the cross-appeal, the issues were whether the judge had erred in dismissing B.M.G.'s action against the Province in negligence and breach of fiduciary duty and in failing to award punitive damages.

Result: Appeal and cross-appeal dismissed. The judge did not err in applying the test from **Bazley v. Curry**, [1999] 2 S.C.R. 534 to the facts and in concluding that it was appropriate to impose vicarious liability on the Province for the wrongful acts of its probation officer. The judge did not err in his handling of the expert testimony or in finding that the assaults caused significant and lasting impact on B.M.G. and his capacity to earn income. The judge's assessment of the pecuniary and non-pecuniary damages did not result in a wholly erroneous estimate of the compensation to which B.M.G. should be entitled. The judge did not err in dismissing B.M.G.'s claims in negligence and breach of fiduciary duty and with those claims dismissed, there was no basis to award punitive damages.

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 52 pages.