

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Roscoe and Freeman, J.J.A.
Cite as: R. v. Feener, 1993 NSCA 34

BETWEEN:

JOHN LLOYD FEENER)	the appellant appeared in person
)	
appellant)	Robert E. Lutes
)	for the respondent
- and -)	
)	Appeal Heard:
HER MAJESTY THE QUEEN)	January 22, 1993
)	
respondent)	Judgment Delivered:
)	January 22, 1993
)	

THE COURT: Appeal dismissed per oral reasons for judgment of Jones, J.A.; Roscoe and
Freeman, J.J.A. concurring.

The reasons for judgment of the Court were delivered orally by:

JONES, J.A.:

This is an appeal from the appellant's conviction on a charge of operating a motor vehicle

while not wearing a seatbelt contrary to s. 175(2) of the **Motor Vehicle Act**.

On December 10, 1991, the appellant issued subpoenas to Premier John Buchanan and Miss Alexa McDonough to give evidence for the defence on the trial.

The trial was held before His Honour Judge Kennedy in the Provincial Court on January 10, 1992. A police officer testified that he observed the appellant operating his vehicle in the town of Lunenburg on August 6, 1991 and that he was not wearing a seatbelt.

The witnesses subpoenaed by the appellant did not appear but were represented by counsel. Counsel submitted that the witnesses had no material evidence to give on the trial. The appellant asked that warrants be issued for the witnesses apparently to testify in relation to the passage of the seatbelt legislation. When queried as to the purpose of the testimony the appellant refused to disclose the evidence which he proposed to deduce from the witnesses. Judge Kennedy was not satisfied that the witnesses could give material evidence and refused to issue the warrants. The matter was adjourned to give the appellant an opportunity to prepare his defence. No evidence was adduced by the defence on the adjourned hearing. The appellant apparently contended that the failure to call the witnesses violated his rights under ss. 7 and 11 of the **Charter**. The trial judge entered a conviction. He found that the Crown had established its case and that there was no **Charter** violation.

The appellant appealed on the ground that he was deprived of a fair trial when the trial judge refused to issue the warrants as the witnesses could give material evidence regarding the passage of the seat belt legislation, which he maintains is unconstitutional.

We have carefully reviewed the record and the written submissions of the appellant. We see no merit in the appeal. The trial judge was correct in refusing to issue the warrants as the appellant had failed to establish that the evidence of the witnesses would be material. Despite repeated requests by the learned trial judge the appellant refused to disclose the purpose for which he required the witnesses. It is by no means clear that the appellant proposed to challenge the legislation under the **Charter** on the trial. In any event this court in **R. v. Doucette** (1987), 77

N.S.R. (2d) 279 upheld the legislation. In the result the appeal is dismissed.

J.A.

Concurred in:

Roscoe, J.A.

Freeman, J.A.