

Date: 19980109

Docket: C.A. 141637

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. M. D., 1998 NSCA 47

Chipman, Hart and Flinn, J.J.A.

BETWEEN:

M. D.)	William M. Leahey
)	for the Appellant
)	
)	
Appellant)	
)	
- and -)	
)	William D. Delaney
)	for the Respondent
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF THE PROVINCE OF NOVA SCOTIA)	
)	
)	
)	Appeal Heard:
Respondent)	January 9, 1998
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)	Judgment Delivered:
)	January 9, 1998
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<p>Editorial Notice</p> <p>Identifying information has been removed from this electronic version of the judgment.</p>
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THE COURT: Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Hart and Chipman, J.J.A. concurring.

FLINN, J.A.: (Orally)

This is an appeal from the decision of Justice Hood of the Supreme Court of Nova Scotia on a *certiorari* application by the Crown. Justice Hood quashed an order of Provincial Court Judge Atton, requiring the Crown to pay solicitor and client costs to the appellant following the appellant's acquittal on a charge of sexual assault.

Judge Atton, immediately after rendering his decision of acquittal, agreed to hear, and granted, an application from defence counsel for relief under **s. 24(1)** of the **Charter**. The basis for the application was that the appellant's **s. 7 Charter** rights had been violated because of the improper exercise of prosecutorial discretion.

Justice Hood quashed the Order because defence counsel had not given the Crown appropriate notice that he intended to seek a **Charter** remedy, and, as a result, the Crown was not given the opportunity to call evidence with respect to the manner in which it exercised its prosecutorial discretion. In fact, Judge Atton did not permit the Crown to call such evidence, and his decision on the

application was based on the evidence presented at the trial. Justice Hood further decided that, without evidence of the improper exercise of prosecutorial discretion, and without a finding by the trial judge of the essential ingredients of abuse of discretion, the decision of Judge Atton, awarding costs against the Crown, was without jurisdiction.

Having reviewed the proceedings of both courts below, as well as the written submissions of counsel, and having heard counsel for both parties, we are of the unanimous opinion that Justice Hood made no reviewable error in quashing Judge Atton's order as to costs.

The appeal is, therefore, dismissed, without costs.

Flinn, J.A.

Concurred in:

Hart, J.A.

Chipman, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

M. D.

Appellant

- and -

HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
NOVA SCOTIA

Respondent

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) REASONS FOR
) JUDGMENT BY:
)
) FLINN, J.A.
) (Orally)
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