

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Howe, 2014 NSSC 354

**Date:** 20140730

**Dket:** CRH 406081

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Lyle Douglas Howe

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**SENTENCING DECISION**

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**Restriction on publication:** (s.539(1) and 486.4CC)

**Judge:** The Honourable Chief Justice Joseph Kennedy

**Heard:** May 5<sup>th</sup> - May 31<sup>st</sup>, 2014, in Halifax, Nova Scotia

**Sentencing:** July 30, 2014

**Counsel:** Darcy MacPherson, Provincial Crown  
Daniel Rideout, Provincial Crown  
Philip J. Star, Q.C., for Defence

**By the Court:**

[1] Thank you counsel for not only the submissions today but also the obvious work that has gone into preparation for today. This is a sad day, a sad day for many people, certainly for Mr. Howe, for his family for sure and people who care about him and there are many of those, obviously, many of them in court today. It is a sad day, but it is a necessary day.

[2] The charge of sexual assault s.271(1)(a) of the **Criminal Code** and that is, as counsel have stated, a serious indictable offence. Lyle Howe was convicted of sexual assault by a jury after a seventeen day trial. That trial commenced on May 5<sup>th</sup>, 2014 and that jury that convicted him on the sexual assault count found him not guilty, acquitted him on the second charge of causing one to take a stupefying drug contrary to s.246(b) of the **Criminal Code**.

[3] So they found him guilty on one count and not guilty on the other. The count we are dealing with today is sexual assault. A very short summary and I do this because there will be times when people make

reference to this sentence decision only and not to the totality of what has taken place. So that there may be some redundancy, I apologize for that.

[4] Lyle Howe, a lawyer, and his friend Jeffrey Brown, his buddy, were together on a Sunday afternoon March 20<sup>th</sup>, 2011. They decided that they would try to contact a young woman who worked at the gas bar, a gas bar that was frequented by Mr. Brown. They decided to do that so they could arrange a date with that woman. They attended at the service station where they obtained her phone number from the attendant and then Lyle Howe phoned her - called this woman out of the blue - introduced himself. Let me respond to Mr. Star's suggestion as to what the jury may have found and what they didn't find. What I am saying, for purposes of sentencing, is that much of this evidence in this trial was uncontradicted. Substantial portions of the evidence given by the victim were not contradicted by Mr. Howe or Mr. Brown, there may have been some detail that was included in one version that may not have been included in the other, this is stuff that is uncontradicted. We know that Lyle Howe phoned the young woman, introduced himself, said he was a lawyer talked her into meeting him that evening, meeting them. They do meet, Mr. Howe, Mr.

Brown and the young woman at a restaurant/bar alcohol is consumed. They go to Mr. Howe's law office - alcohol is consumed. Mr. Lyle Howe eventually comes back to the young woman's apartment and she testified that she and Lyle Howe played pool. She testified that he motioned for her to join him on the sofa, she testified that he kissed her and that she remembers nothing after that, nothing from that point forward, with the exception of a, what was referred to as the five second interval, nothing forward til she wakes up the next morning on the floor naked, it is a blank.

[5] Lyle Howe testified that he had oral, anal and vaginal sex with the complainant. He testified that she actively consented - she said "no". After listening to thirteen days of evidence, including conflicting evidence, conflicting evidence between Mr. Howe and the complainant, some conflicting evidence between the complainant and Mr. Brown. After thirteen days of evidence, reviewing hundreds of text messages, that jury found that the victim did not consent to the sexual activity and that the fact that she was not consenting was known to Lyle Howe. They came to those two conclusions beyond a reasonable doubt, and that is sexual assault and that is what we are dealing with today.

[6] As to sentence, let me briefly speak to the principles of sentencing. Section 718 of the **Criminal Code** sets out the fundamental purposes of sentencing, denunciation, deterrence both general and specific, separation of the offender from society when necessary, rehabilitation, promotion of a sense of responsibility in the offender.

[7] Section 718.1 of the **Criminal Code** states a sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender. Section 718.2(b) of the **Criminal Code**, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[8] Lets be specific about sexual assault, it is difficult to describe a precise sentencing range. Cases bearing similarity to this one suggest that sentences in this province, in Nova Scotia would, even in the absence of criminal record, which is our situation with Mr. Howe, would generally not attract less than two years federal time. The instance of *R. v. J.J.W.*, 2012 NSCA96 cited by the crown, the Court of Appeal in this province held that

a five month sentence for a sexual assault involving forced anal intercourse was “demonstrably” unfit, meaning too low.

[9] In *R. v. WHA*, 2011 NSSC 246, [2011] N.S.J. No. 460, a decision of Rosinski J of this Court, a 36 year old offender had non-consensual intercourse with a 17 year old cousin of his wife, who was staying in the home after an argument with her mother. There were aggravating factors, including the complainant’s age, the extensive prior criminal record for sexual offences that the perpetrator had, the provision of alcohol and marijuana to the complainant. There were no mitigating factors to speak of. After reviewing the case law including Marshall, and I will speak to Marshall in a moment, Rosinski J imposed a sentence of five years on the sexual assault count.

[10] In *R. v DHE*, 2012 NSSC 260, [2012] NSJ No. 428, a decision of Scaravelli J, a 49 year old offender gives the victim drugs and alcohol and then had intercourse with her when she passed out. He pleaded guilty to sexual assault. Scaravelli J imposed a sentence of three years imprisonment, noting that looking at the nature of the offence and the

offender's degree of culpability, he pre-planned and performed sexual intercourse on the victim while she was drug induced into a helpless state and then left her to fend for herself. He described this as a serious sexual assault.

[11] Finally I will speak of *R.v. Marshall*, 2008 NSSC 132, [2008] NSJ No. 209, and Marshall is familiar to this court because it was my decision. In that case, a 39 year old First Nations Chief comes to Halifax finds a 20 year old complainant studying for her exams, talks her into joining him at a strip club where he buys her drinks until she becomes substantially impaired. He then takes her to a hotel, where after she passes out he has intercourse with her. The defence requested a conditional sentence. I stated and I quote "I have consideration for all the various factors in the difficult process of balancing, I have considered conditional sentencing. I do not consider that the Chief was in the position of authority vis-a-vis the victim, on the other hand, I do consider that he was a community leader and had a particular responsibility. I believe this offence, this sexual intercourse, speaking now of the Marshall case, with this unconscious woman to be of such a gravity as to justify public denunciation. In specific,

having considered s.718.2 and having considered the *Gladue* principles, specific to that case. I do not consider a conditional sentence, that would be a sentence that would require a totality of less than two years, I do not consider a conditional sentence appropriate and I sentenced Mr. Marshall to three years in a federal institution.

[12] Let's talk about this offender, this case, Mr. Lyle Howe, 29 years of age, not a typical an offender before this court. Mr. Howe was at all times relevant to this offence a practicing lawyer. What I speak of now is uncontested. He used his status, his position as a lawyer to accomplish the events which led eventually to the sexual assault. "I'm a lawyer, google me" those two statements were made during the very first contact that was had with this young woman. The very first contact, when he is trying to talk her into going out on a date, and it worked, the complainants reaction and I quote from her testimony "he assured me that he was a lawyer" although she said she was skeptical about the date, she testified "I thought if he was a lawyer it would be okay, my security blanket. He wouldn't do anything to jeopardize his career." Well it turned out that he would and he did.



[13] I am satisfied that for sentencing purposes that the disclosure, the immediate disclosure that he, Lyle Howe, was a lawyer was meant to impress and reassure this teenage girl that she could meet with Lyle Howe and his buddy, who he described as a financial advisor, she could meet with those individuals without risk.

[14] The use of ones professional standing to effectively seduce a teenage girl, which eventually led to a sexual assault is an aspect to this offence that deserves condemnation. Mr. Howe's actions, in that respect, even considering his own testimony in the matter, his actions were despicable and eventually criminal.

[15] This behaviour by the accused is a factor in this sentence. On the other hand, Lyle Howe, has no criminal record. He will be treated as a first offender and that is significant. Mr. Star has touched upon and I will repeat, very sad aspect of this matter, that is that he will otherwise suffer dramatic consequences as a result of his behaviour. Lyle Howe has a lot to lose. He is, to my knowledge, suspended by the Barristers Society from the practice of law, his profession, his livelihood are both in serious

jeopardy. It is reasonable to speculate that he may never practice law again. That is a possible outcome, think about that consequence, that is his life. That is a factor for me to consider in determining the sentence and I do.

[16] Two other things that I want to put on the record before I sentence in this matter. I want to say something about this jury, I want to record my admiration for, and my confidence in this jury. Fifteen court days, two days of deliberation - sequestration, they demonstrated that they were dedicated to compliance with their oath, their oath to render a verdict based solely on the evidence that they heard in this courtroom, but all of the evidence, not selective portions of the evidence, all of the evidence. They were thoughtful, they were careful and they were correct. The verdict on both those charges, both the conviction and the acquittal. Both of those verdicts, I am satisfied, were supported by the evidence. This was a good jury.

[17] Let me say something about the victim, not very much conversation about the victim, victim is not here, no victim impact statement and we

don't often talk about victims. I will not allow the term "victim" to be used until such time as there has been a finding of guilt. Don't talk about victims very much at trials but this is a sentencing and I can talk about the victim and I intend to. She was a remarkable young woman, she was on that stand before this jury and the public and the media for nineteen hours. Nineteen hours of examination and cross examination which revealed her flaws, and her mistakes and her contradictions and her obvious immaturity but at the end of that process she was "believed". She was believed when she testified to the constituent elements of this offence. Twelve members of that jury watched that victim and heard that victim testify for nineteen hours at the end of that process they believed her and that finding of credibility is her reward.

[18] I have a joint recommendation and I will sign the three orders sought, the order to comply with the Sexual Offender Information Registry, the order authorizing the taking of bodily substances for DNA analysis and the weapons prohibition for a period of twenty years. Those orders will be accomplished.

[19] I have a joint recommendation as to sentence, that recommendation comes from good experienced trial lawyers. Both crown and defence considering and looking after the best interest of their constituents. Sometimes joint recommendations are not realistic and I don't accept them. That is not the case here. This recommendation is a sound solid recommendation within the proper range of sentencing for a first offender, having been found guilty of this serious indictable offence.

[20] I do consider public denunciation and deterrence to be applicable and I also consider the circumstances of Lyle Howe as an individual before this court.

[21] Stand please Mr. Howe, I sentence you on the one count of sexual assault to serve a period of three years incarceration in a federal institution and I will sign the orders when presented. Thank you counsel.

J.