

## REASONS FOR JUDGMENT

- [1] The appellant was charged with sexual assault and sexual interference in regard to two teenage girls. In addition to the evidence of the complainants, the Crown relied upon statements made by the appellant, admitting the conduct in relation to one girl, and his being unable to remember if the conduct in relation to the other occurred. The appellant testified, denied the conduct occurred with either complainant, and called character evidence. He admitted making the statements relied upon, but testified they were induced from him and were false. The statements were made to a judge of the Supreme Court of Nova Scotia, who was the appellant's aunt and the grandmother of one of the complainants.
- [2] The trial judge admitted the statements following a *voir dire*, concluding that neither the judge nor the mother of one of the complainants, the judge's daughter, were "persons in authority". She disbelieved the appellant's evidence that there was no sexual contact with the complainants, rejected his evidence that the statement was false, and found the appellant guilty on the four counts. She stayed the two counts of sexual interference pursuant to *Bernstein v. The Queen* (1986), 28 C.C.C. 973. The appellant was sentenced to 6 months, served conditionally on each count consecutive to each other, and 12 months' probation. He has served the conditional sentences.
- [3] He appeals the convictions, contending the trial judge erred in finding the judge and her daughter were not "persons in authority", and in failing to provide adequate reasons for judgment.
- [4] For the following reasons, the appeal is allowed and a new trial ordered.

### The Factual Allegations

- [5] The first complainant, D.P., testified that she spent the night at the appellant's home in December of 20--. D.P. had been smoking marijuana, and passed out on the couch. Because he was expecting company to watch a hockey game on television, the appellant moved or carried D.P. into the appellant's bed. D.P. testified that when she went to bed the buttons of dress were done up. They were tight and difficult to undo. When she awoke in the morning, they were undone. On a previous occasion, several months before, she had gone to sleep in the appellant's bed and awoke in the night ...