

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v*. Snelgrove, 2019 SCC 16, [2019] 2 S.C.R. 98 | **Appeal Heard:** March 22, 2019  **Judgment Rendered:** March 22, 2019  **Docket:** 38372 |

Between:

**Carl Douglas Snelgrove**

Appellant

and

Her Majesty The Queen

Respondent

**Coram:** Moldaver, Karakatsanis, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | Moldaver J. (Karakatsanis, Brown, Rowe and Martin JJ. concurring) |

R. *v.* Snelgrove, 2016 SCC 16, [2019] 2 S.C.R. 98

Carl Douglas Snelgrove Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** Snelgrove

2019 SCC 16

File No.: 38372.

2019: March 22.

Present: Moldaver, Karakatsanis, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for newfoundland and labrador

*Criminal law — Charge to jury — Sexual assault — Vitiation of consent — Police officer acquitted by jury of sexual assault — Court of Appeal setting aside acquittal and ordering new trial — Trial judge erred in refusing to instruct jury on provision which provides that no consent is obtained where accused induces complainant to engage in sexual activity by abusing position of trust, power, or authority — New trial warranted — Criminal Code, R.S.C. 1985, c. C-46, s. 273.1(2)(c).*

**Cases Cited**

**Referred to:** *R. v. Hogg* (2000), 148 C.C.C. (3d) 86; *R. v. Lutoslawski*,2010 ONCA 207, 258 C.C.C. (3d) 1.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, ss. 265(3)(d), 273.1(2)(c).

APPEAL from a judgment of the Newfoundland and Labrador Court of Appeal (Welsh, White and Hoegg JJ.A.), 2018 NLCA 59, 366 C.C.C. (3d) 164, 50 C.R. (7th) 133, [2018] N.J. No. 300 (QL), 2018 CarswellNfld 378 (WL Can.), setting aside the acquittal of the accused and ordering a new trial. Appeal dismissed.

Randolph J. Piercey, Q.C., and *Michael Crystal*, for the appellant.

Iain R. W. Hollett, for the respondent.

The judgment of the Court was delivered orally by

[1] Moldaver J. — This appeal comes to us as of right from the Court of Appeal of Newfoundland and Labrador. The issue before us is whether a majority of that court erred in setting aside the appellant’s acquittal on a charge of sexual assault following a trial by judge and jury and ordering a new trial. The particular issue at hand is whether the majority of the Court of Appeal wrongly concluded that the trial judge erred in refusing to instruct the jury on s. 273.1(2)(c) of the *Criminal Code*, R.S.C. 1985, c. C-46— a provision which provides that no consent is obtained where an accused, by abusing a position of trust, power, or authority, induces a complainant to engage in sexual activity.

[2] We would dismiss the appeal, substantially for the reasons of the majority of the Court of Appeal.

[3] Section 273.1(2)(c) has as its aim “[t]he protection of the vulnerable and the weak and the preservation of the right to freely choose to consent to sexual activity” (*R. v. Hogg* (2000), 148 C.C.C. (3d) 86 (Ont. C.A.), at para. 17). Inducing consent by abusing the relationships set out in s. 273.1(2)(c) does not imply the same kind of coercion contemplated by s. 265(3)(d) of the *Criminal Code*, which speaks to consent obtained where the complainant submits or does not resist by reason of the “exercise of authority”. Rather, as Justice Doherty observed in *R. v. Lutoslawski*,2010 ONCA 207, 258 C.C.C. (3d) 1: “An individual who is in a position of trust over another may use the personal feelings and confidence engendered by that relationship to secure an apparent consent to sexual activity” (para. 12).

[4] On the facts of this case, we are of the view that it would have been open to the jury to conclude that by virtue of abusing his position of trust and authority, the accused took advantage of the complainant, who was highly intoxicated and vulnerable, by using the personal feelings and confidence engendered by their relationship to secure her apparent consent to sexual activity. An instruction under s. 273.1(2)(c) was therefore warranted. Accordingly, we would dismiss the appeal.

Judgment accordingly.

Solicitors for the appellant: Noonan Piercey, St. John’s; Spiteri & Ursulak, Ottawa.

Solicitor for the respondent: Attorney General of Newfoundland and Labrador, St. John’s.