



The Supreme Court sets aside a man’s acquittals for trafficking in persons and orders a new trial.

This appeal addresses whether evidence of past violence may be relevant to the offence of trafficking in persons in a criminal prosecution.

From 2004 to 2012, the complainant and the accused were in a common law relationship that was plagued by violence and financial difficulties. According to the complainant, the accused persuaded her to have sex on a webcam for money, dance for men, and offer sexual services for money, which she did because of the accused’s violence and threats towards her. She also claimed that the accused was deeply involved in the sexual services, including posting ads offering sexual services, and received all the money. She stated that this continued until she left the accused in 2012. The accused was charged with trafficking in persons and receiving a material benefit from it, contrary to sections 279.01(1) and 279.02(1) of the *Criminal Code*.

At trial, the complainant and five other witnesses provided evidence of the accused’s violence towards the complainant. The trial judge acquitted the accused. He accepted that the complainant was in a violent relationship with the accused, but he found her testimony lacking in credibility. He also had a reasonable doubt about the accused’s ties to any prostitution enterprise. He considered the evidence from the other witnesses as backdrop, but not in relation to the alleged offences, concluding that it related to “past discreditable conduct”. Evidence of past discreditable conduct relates to past misconduct of the accused that goes beyond what is alleged by the prosecution in relation to an offence and is not normally admissible.

The Crown appealed the acquittals to the Court of Appeal, arguing that the trial judge should have considered the evidence of the other witnesses about the accused’s violence towards the complainant. The majority of the Court of Appeal confirmed the acquittals. It held that the trial judge was wrong to conclude that the accused’s violence was past discreditable conduct but that the error did not have a significant impact on the acquittals. The majority also concluded that the trial judge did not fail to consider all the evidence. The dissenting judge would have ordered a new trial, finding that the trial judge failed to consider all the evidence, and that treating the accused’s violence as past discreditable conduct misapprehended its nature and relevance to the elements of both offences that the Crown needed to establish. The Crown appealed to the Supreme Court.

The Supreme Court has allowed the appeal, set aside the acquittals, and ordered a new trial.

Evidence of regular violence, threats of violence, and a violent relationship may be relevant to the elements of the offence of trafficking in persons.

Writing for the majority, Justice O’Bonsawin concluded that the trial judge assessed the evidence based on a wrong legal principle by determining that the evidence of violence and threats of violence by the accused towards the complainant was evidence of past discreditable conduct. This error of law hindered his assessment of the evidence and considerably diminished the evidentiary foundation relevant to the essential elements of the trafficking in persons offence and the definition of exploitation set out in section 279.04 of the *Criminal Code*. The trial judge’s error might have had a material bearing on the acquittals. They should therefore be set aside and a new trial ordered.

Breakdown of the decision: *Majority:* Justice [O’Bonsawin](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Martin](#), [Kasirer](#), [Jamal](#), and [Moreau](#) agreed) | *Dissenting:* Justices [Côté](#) and [Rowe](#) would have dismissed the appeal.

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Lower court rulings: [Judgement](#) (Supreme Court of Nova Scotia, Trial Division) | [Appeal](#) (Nova Scotia Court of Appeal)

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