

**SUPREME COURT OF CANADA**

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| **Citation** : R. *v.*S.D., 2011 SCC 14, [2011] 1 S.C.R. 527 | **Date** : 20110317  **Docket** : 33842 |

Between:

Her Majesty The Queen

Appellant

and

S.D.

Respondent

**Official English Translation**

**Coram** : Binnie, LeBel, Deschamps, Fish, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment** :  (paras. 1 to 4)  **Dissenting Reasons:**  (para. 5) | Binnie J. (LeBel, Deschamps, Charron, Rothstein and Cromwell JJ. concurring)  Fish J. |

R. *v.* S.D., 2011 SCC 14, [2011] 1 S.C.R. 527

Her Majesty The Queen *Appellant*

v.

S.D. *Respondent*

**Indexed as: R**. ***v.* S.D.**

2011 SCC 14

File No.: 33842.

Hearing and judgment: March 17, 2011.

Dissenting reasons delivered: March 21, 2011.

Present: Binnie, LeBel, Deschamps, Fish, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for quebec

*Criminal law — Sexual interference — Indictment — Time of offence — Accused convicted of committing offence* *on date other than one referred to in indictment — Fairness of trial not affected.*

APPEAL from a judgment of the Quebec Court of Appeal (Pelletier, Morissette and Duval Hesler JJ.A.), 2010 QCCA 1418, SOQUIJ AZ-50662831, [2010] J.Q. no 7507 (QL), 2010 CarswellQue 7903, setting aside the accused’s conviction and ordering a new trial. Appeal allowed, Fish J. dissenting.

Joey Dubois and Mylène Grégoire, for the appellant.

Robert Jr. Poirier, for the respondent.

English version of the judgment of Binnie, LeBel, Deschamps, Charron, Rothstein and Cromwell JJ. delivered orally by

1. Binnie J. — The majority of the Court would allow the appeal, Fish J. dissenting. The main issue in this appeal is whether the trial judge erred in law in convicting the respondent, who was charged with sexual interference with his daughter, on the basis of a date other than the one referred to in the indictment.
2. The majority of the Court agree with the conclusion of Duval Hesler J.A., who dissented in the Court of Appeal, that [translation] “trial fairness was not compromised . . . . The evidence accepted by the trial judge satisfied her beyond a reasonable doubt that the incident in question did in fact occur regardless of the exact time it took place” (para. 69). In our view, the defence was based entirely on a question relating to credibility. The respondent was in no way prejudiced.
3. We consider the other arguments raised by the respondent in this case to be unfounded.
4. The appeal is accordingly allowed and the Court of Appeal’s decision is reversed. The trial judge’s verdict is restored.

English version of the reasons delivered by

1. Fish J. (dissenting) — According to the indictment in this case, which has to this date not been amended, the case the respondent had to meet was that he had touched the complainant for a sexual purpose [translation] “[b]etween April 1, 2002, and May 31, 2002”. At trial, the complainant testified that the respondent had touched her for a sexual purpose not during the period mentioned in the indictment but in the summer of 2001. However, the trial judge convicted the respondent of touching the complainant for a sexual purpose neither during the period alleged in the indictment nor during the period mentioned by the complainant, but after September 22, 2002, the date the respondent purchased the futon on which the incident mentioned by the complainant allegedly took place. In these circumstances, and for the reasons given by Pelletier J.A. (with which Morissette J.A. concurred), I believe the respondent did not have the fair trial to which he was entitled. Accordingly, I would have dismissed the Crown’s appeal to this Court.

*Judgment accordingly.*

Solicitor for the appellant: Directeur des poursuites criminelles et pénales du Québec, Salaberry-de-Valleyfield.

Solicitor for the respondent: Centre communautaire juridique de la Rive-Sud, Salaberry-de-Valleyfield, Quebec.