



The Supreme Court has provided guidance to appellate courts on inconsistent jury verdicts.

This case deals with the concept of inconsistent verdicts given by a jury. This happens when a jury finds an accused person both guilty and not guilty of the same conduct. The Supreme Court of Canada clarified the approach to be taken by appellate courts when verdicts are alleged to be inconsistent.

The accused, R.V., was charged with sexual offences against an underage person between 1995 and 2003. Specifically, he was charged with sexual assault, sexual interference and invitation to sexual touching. The jury convicted R.V. of sexual interference and invitation to sexual touching. The same jury found him not guilty of sexual assault based on the same evidence. R.V. appealed his convictions. He claimed the guilty verdicts were unreasonable because they were inconsistent with the not guilty verdict. The Crown (prosecution) cross-appealed the not guilty verdict, claiming the instructions to the jury were so unnecessarily confusing that it amounted to an error of law.

A majority of the Court of Appeal for Ontario found that the convictions for sexual interference and invitation to sexual touching were unreasonable because they were inconsistent with the not guilty verdict on the sexual assault charge. It also concluded there was no legal error in the instructions to the jury. Therefore, the majority set aside the convictions and substituted not guilty verdicts. The prosecution appealed the case to the Supreme Court of Canada.

A majority of the judges of the Supreme Court of Canada set out a framework to analyze cases where an accused person alleges that verdicts are inconsistent. The majority wrote that in some cases, the prosecution can try to reconcile verdicts that appear to be inconsistent if they were the result of a legal error in the instructions to the jury.

In explaining the framework, the majority said that the burden is on the prosecution to satisfy an appellate court to a high degree of certainty that there was a legal error in the instructions to the jury and that the error: (1) had an impact on the not guilty verdict; (2) did not have an impact on the guilty verdict; and (3) demonstrates that the jury did not find the accused guilty and not guilty of the same conduct.

Applying the framework to the facts before them, the majority found that the trial judge had misdirected the jury on the charge of sexual assault, which was a legal error. Specifically, the trial judge left the members of the jury with the mistaken impression that the element of “force” required for sexual assault was different than the element of “touching” required for sexual interference and invitation to sexual touching. The majority then found, to a high degree of certainty, that the legal error: (1) had a significant impact on the not guilty verdict of sexual assault; (2) did not have an impact on the guilty verdicts; and (3) demonstrated that the jury did not actually find R.V. guilty and not guilty of the same conduct, because the jury had not been given the right explanation of what “force” meant.

As a result of its analysis, the majority concluded that the verdicts were not actually inconsistent and therefore not unreasonable. The majority reinstated the guilty verdicts. It also set aside the not guilty verdict on the charge of sexual assault and entered a “stay of proceedings” on that charge. This means the criminal process was stopped instead of ordering a new trial.

Breakdown of the decision: *Majority:* Justice Michael J. [Moldaver](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Karakatsanis](#), [Côté](#), [Rowe](#) and [Martin](#) agreed) | *Dissenting:* Justice Russell [Brown](#) found that the verdicts were inconsistent and that a court’s role should be limited to ordering a new trial on all the charges (Justice [Kasirer](#) agreed)

More information (case # 38854): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: Ontario Superior Court of Justice (unreported) | [appeal](#) (Court of Appeal for Ontario)
