

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* McKenna, 2015 SCC 63, [2015] 3 S.C.R. 1087 | **Date:** 20151211  **Docket:** 36506 |

Between:

Her Majesty The Queen

Appellant

and

Harry McKenna

Respondent

**Coram:** Abella, Moldaver, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**  (paras. 1 to 2) | Abella J. (Moldaver, Wagner, Gascon and Côté JJ. concurring) |

R. *v.* McKenna, 2015 SCC 63, [2015] 3 S.C.R. 1087

Her Majesty The Queen Appellant

v.

Harry McKenna Respondent

**Indexed as:** R. ***v.*** McKenna

2015 SCC 63

File No.: 36506.

2015: December 11.

Present: Abella, Moldaver, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for new brunswick

*Criminal law — Trial — Charge to jury — Accused convicted of second degree murder — Meaning of manslaughter not explained to jury — Court of Appeal finding errors in trial judge’s instructions and ordering new trial — Court of Appeal correct in declining to apply curative proviso — Criminal Code, R.S.C. 1985, c. C-46, s. 686(1)(b)(iii).*

APPEAL from a judgment of the New Brunswick Court of Appeal (Deschênes, Bell and Quigg JJ.A.), 2015 NBCA 32, 436 N.B.R. (2d) 264, 324 C.C.C. (3d) 452, 1139 A.P.R. 264, [2015] N.B.J. No. 125 (QL), 2015 CarswellNB 233 (WL Can.), setting aside the accused’s conviction for second degree murder and ordering a new trial. Appeal dismissed.

Kathryn A. Gregory and Hilary J. A. Drain, *Q.C.*, for the appellant.

Margaret Gallagher, *Q.C.*, for the respondent.

The judgment of the Court was delivered orally by

[1] Abella J. — We are all of the view that the appeal should be dismissed. The errors of law in connection with the failure to identify the unlawful act and to properly instruct the jury on the elements of manslaughter are such that the curative proviso is inapplicable.

[2] The appeal is therefore dismissed.

*Judgment accordingly.*

Solicitor for the appellant: Attorney General of New Brunswick, Fredericton.

Solicitor for the respondent: New Brunswick Legal Aid Services Commission, Saint John.