Supreme Court File Nos.: 26418; 26419
Nelson Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

ON APPEAL FROM CONVICTION AND SENTENCE
BY THE HONOURABLE JUDGE SICOTTE
OF THE PROVINCIAL COURT OF BRITISH COLUMBIA AT NAKUSP
ON JULY 15, 2021

BETWEEN:

REGINA

RESPONDENT
(Appellant by Cross-Appeal on Information 26418)

AND:

TREVOR RUSSELL HOLSWORTH

APPELLANT
(Respondent on Cross-Appeal)

RESPONDENT'S STATEMENT OF ARGUMENT

(Rule 6(14)-(19) of the *Criminal Rules of the Supreme Court of British Columbia,* S.I./97-140)

ON HIS OWN BEHALF:

Trevor Russell Holsworth
405 9th Avenue
New Denver, BC V0G 1S0
Tel: 250-551-6940

COUNSEL FOR THE RESPONDENT:

Mark A. Erina
Esher V. Madhur
Public Prosecution Service of Canada
12th Floor, 800 Burrard Street
Vancouver, B.C. V6Z 2G7
Tel: 604-666-5250
Fax: 604-666-3698

INDEX

OVERVIEW

1. The appellant, Trevor Russell Holsworth, appeals his seven convictions under s.238(1) of the *Income Tax Act,* R.S.C. 1985, c. 1 (5th Supp.) (the ***"ITA"***) for failing to comply with Notices of Requirement to file various personal and corporate income tax returns by July 23, 2019. He also appeals his sentence of fines totalling $5002 to be paid by July 15, 2026. Simultaneously, the Crown cross-appeals the sentence imposed on Counts 1 and 2 on Information 26418, for the reasons set out in its Statement of Argument filed October 13, 2021.

2. Mr. Holsworth's conviction appeal centers on two constitutional issues that he unsuccessfully raised at trial. One of the issues was an application for unspecified constitutional remedies based on his long-standing grievances with the judiciary, the Canadian Judicial Council, and the federal government, which stem from his involvement in family litigation in 2006. Mr. Holsworth argued that he could not receive a fair criminal trial until his grievances were resolved. The trial judge, however, noted that the grievances had no connection to the case before him and dismissed the application as having no reasonable prospect of success.

3. On appeal, Mr. Holsworth asserts that, by ignoring his application, the trial judge acted unjudicially and denied him his "constitutionally guaranteed Charter of Rights."[1] He asks this Court to adjudicate his grievances, which he has framed for the first time on appeal as breaches of ss. 2, 6(1), 6(2), 7, 11(d), 12, 15 and 20 of the *Canadian Charter of Rights and Freedoms*,[2] and which he has broadened to encompass other state actors such as the BC Family Maintenance Enforcement Program, the Law Society of British Columbia, the RCMP, and Crown Counsel. Not only does Mr. Holsworth seek to have his convictions set aside, he also asks this Court for: (1) a declaration that there has been a miscarriage of justice; (2) a *writ of mandamus* directing the Minister of Justice to heed his complaint to the Canadian Judicial Council; and (3) *Charter* damages.[3]

---

[1] Mr. Holsworth's Statement of Argument at p. 3
[2] Mr. Holsworth's Statement of Argument at pp. 6-17
[3] Mr. Holsworth's Statement of Argument at pp. 4, 20-21

4. The grounds of appeal relating to these grievances[4] have no merit. Mr. Holsworth's grievances, being irrelevant to this case, had no bearing on the fairness of his trial. The trial judge properly exercised his discretion by summarily dismissing Mr. Holsworth's application.

5. While it is not entirely clear from his appeal materials, the Crown surmises that, as part of his conviction appeal, Mr. Holsworth also appeals the trial judge's dismissal of his other constitutional issue: a challenge to s. 238(1) of the *ITA* on the basis that it violates the rule in *Re B.C. Motor Vehicle Act,* [1985] 2 S.C.R. 486 by carrying imprisonment as a possible punishment. The trial judge correctly dismissed this challenge. It is settled law that imprisonment can constitutionally be imposed for strict liability offences such as the one in s. 238(1) of the *ITA*.

6. With respect to his sentence appeal, Mr. Holsworth argues that the trial judge erred by imposing fines on him despite his stated inability to pay. This ground of appeal also has no merit. The trial judge did not have the discretion to impose a fine of less than $1000 per count; s. 238(1)(a) of the *ITA* prescribes this mandatory minimum fine, which, as a matter of law, is unaffected by the offender's ability to pay. The trial judge therefore correctly fined Mr. Holsworth $1000 for each of counts 3-4 on Information 26418 and 1-3 on Information 26419. (His Honour's error in imposing fines of $1 each for the remaining two counts is addressed in the Crown's cross-appeal.)

PART I - STATEMENT OF FACTS

The Charges

7. In January 2020, Mr. Holsworth was charged on two informations with seven counts of failing to file income tax returns as required by Notices of Requirement served on him pursuant to s. 231.2(1) of the *ITA*.[5] This is a strict liability, summary conviction offence under s. 238(1) of the *Act.*[6] The four counts on Information 26418 pertained to corporate income tax returns for Kootenay Experience Ltd. for the taxation years ending

---

[4] Mr. Holsworth's Notice of Appeal, Appeal Book (**"AB"**) Tab 10, grounds 2-6
[5] Information 26418, AB Tab 1; Information 26419, AB Tab 2
[6] *R. v. Merrill,* 2021 BCSC 1017 at para. 23

in 2014 through 2017, and the three counts on Information 26419 addressed Mr. Holsworth's personal income tax returns for the taxation years 2015 through 2017.

The Trial

8. Mr. Holsworth pleaded not guilty to all counts[7] and a joint trial on both informations took place on July 15, 2021 before the Honourable Judge Sicotte of the Provincial Court in Nakusp, BC. Mr. Holsworth was self-represented at the trial.[8]

(a) Mr. Holsworth's Notice of Constitutional Question

9. At the outset of the trial, prior to the Crown's case, Mr. Holsworth presented a "Notification – Constitutional Question Act" (the **"Notice of Constitutional Question"**) raising two issues: (1) a constitutional challenge to s. 238(1)(b) of the *ITA* on the basis that it "provides for a term of imprisonment which is contrary to the Charter of Rights as stated in Reference Re BC Motor Vehicle Act, 1985, 2 SCR 486"; and (2) an application for unspecified constitutional remedies and "for the constitutionality of the Courts [to] be checked by Parliament", on the basis of his grievances with the judiciary and government.[9]

10. Mr. Holsworth's grievances are about how the Canadian Judicial Council (the **"CJC"**), the Minister of Justice and Attorney General of Canada, and Parliament responded (or did not respond, as the case may be) to a complaint Mr. Holsworth had made to the CJC in the summer of 2007 about the Honourable Justice D.W. Shaw of this Court.[10] In 2006, Shaw J. presided over a family dispute in which Mr. Holsworth was a defendant.[11] Mr. Holsworth complained that Shaw J. wrongly "accepted the evidence of

---

[7] Mr. Holsworth's Transcript (**"Ts."**) p.2, l.32-38
[8] Mr. Holsworth advised the trial judge that he had spoken to "probably about 30" lawyers but that all had refused to give him legal advice or declined to represent him once they had reviewed the evidence: Ts. p.2, l.43 – p.3, l.39
[9] Mr. Holsworth's 'Notification – Constitutional Question Act', AB Tab 5
[10] Ts. p.4, l.43 – p.5, l.29; p.6, l.15 – p.15, l.35
[11] See *Holsworth v. Holsworth,* 2006 BCSC 604

[Mr. Holsworth's] former spouse and her lawyer instead of accepting the transcript"[12] when confirming the terms of an order he had made.[13] In response to this complaint, the CJC said:

> The admissibility and weighing of evidence is a matter that falls within the ambit of judicial discretion. Chief Justice Pidgeon is of the view that Justice Shaw exercised his judicial discretion when he preferred certain evidence over others. The exercise of judicial discretion is not a matter of conduct.

11. Unsatisfied with the CJC's response, Mr. Holsworth wrote a letter to the Attorney General of Canada (which was apparently sent in March 2020 and is appended to his Notice of Constitutional Question[14]). In that letter, Mr. Holsworth complained that "Federal Judges through the Canadian Judicial Council (CJC) are claiming the right to dispense arbitrary justice", including by preferring testimony over transcript evidence.[15]

12. Mr. Holsworth reiterated this complaint in the body of his Notice of Constitutional Question, adding related complaints about the Attorney General's failure to respond to his letter or take remedial action.[16] In addition to seeking unidentified constitutional remedies and that Parliament be ordered to "check" the courts, he expressed concern that, given his past treatment by Shaw J. and the CJC, he could not expect a fair criminal trial.[17]

13. Before making a ruling, the trial judge attempted to explain to Mr. Holsworth how transcript evidence is generally used and weighed.[18] He then dismissed the application, saying:

---

[12] Letter from the CJC to Mr. Holsworth dated 28 August 2007, appended to the Crown's Response to Mr. Holsworth's Constitutional Notice, AB Tab 6.
(Per para. 9 of the Crown's Response (AB Tab 6), the Crown assumed the authenticity of this letter for the purposes of the trial.)
[13] Ts. p.10, l.21-43
[14] AB Tab 5
[15] AB Tab 5, p.2
[16] AB Tab 5, p.1
[17] Ts. p.11, l.7-20; p.12, l.30-35
[18] Ts. p.9, l.11 – p.10, l.18

> [A]gain, sir, I appreciate you may have concerns, valid or not, from what happened [before Shaw J.]. I wasn't present, I don't know anything about that hearing.
>
> I can tell you today that I do not have any misgivings about you getting a fair trial in this court and I – so with respect to your notice of constitutional question, I am not prepared to adjourn the proceeding or strike this proceeding based on the concerns that you have raised in your notice of constitutional question. I do not find that there is any validity to those concerns as applying to this trial today. I am not saying there is no validity to your concerns about what happened in the past. But it does not affect what needs to happen today with respect to these charges. All right? I do not find that there is any realistic prospect of success to your *Charter* argument with respect to what has been filed before this court in terms of the charges that are before you today.[19] [Emphasis added.]

14. Upon Mr. Holsworth seeking clarification about the basis for the ruling, the trial judge stated that the application had "no reasonable prospect of success", not that it was "frivolous or vexatious."[20]

15. Mr. Holsworth then drew the court's attention to the other issue raised in his Notice of Constitutional Question: whether it violates the *Charter* in the manner described in *Re B.C. Motor Vehicle Act* that s. 238(1)(b) of the *ITA* provides for a term of imprisonment.[21] The Crown was not prepared to make submissions on this issue and the judge deferred it in order to proceed with the evidence.[22]

(b) The Case for the Crown

16. The Crown's only witness was Matthew Hopkins, an officer of the Canada Revenue Agency. By reference to fourteen affidavits he had previously sworn,[23] he testified to having:

(a) served Mr. Holsworth, both in his personal capacity and as director of Kootenay Experience Ltd.,[24] by registered mail, with seven Notices of

---

[19] Ts. p.11, l.20-40
[20] Ts. p.14, l.19-26
[21] AB Tab 5; Ts. p.16, l.13-30
[22] Ts. p.16, l.31 – p.17, l.8
[23] Exhibits 1-14, AB Tabs 4(a) – 4(n)
[24] Exhibit 15, AB Tab 4(o); Ts. p.42, l.3 – p.43, l.24

Requirement issued under s. 231.2(1) of the *ITA,* requiring Mr. Holsworth to file the tax returns specified in the Notices (personal tax returns for 2015, 2016 and 2017, and corporate tax returns for Kootenay Experience Ltd. for the years ending in 2014, 2015, 2016 and 2017) within 90 days of the date of service, April 23, 2019;[25] and

(b) verified that the required tax returns had not been filed by the 90-day deadline.[26]

17. Mr. Hopkins also testified to having received several phone calls from Mr. Holsworth in which he confirmed having received the Notices of Requirement.[27] In the course of this testimony, the court declared a *voir dire* regarding the voluntariness of the phone calls.[28] Mr. Holsworth initially agreed that the phone calls were all voluntary,[29] but subsequently retracted this admission, submitting that the threat of imprisonment was weighing on him during his communications with Mr. Hopkins and that he felt he had no choice but to communicate with the Canada Revenue Agency.[30] He further submitted that, owing to his prior negative experiences with the court system, he had an "intense fear" of attending court and having his rights disrespected there, and that this fear motivated him to resolve matters with Mr. Hopkins.[31]

18. The court ruled that the phone calls were voluntary.[32] Mr. Hopkins' evidence in chief about the substance of the phone calls was that he confirmed Mr. Holsworth's identity through three security questions,[33] Mr. Holsworth confirmed receipt of the Notices of Requirement, and Mr. Holsworth indicated that he did not know what his plans were

---

[25] Ts. p.19, l.2 – p.24, l.45
[26] Ts. p.31, l.40 – p.32, l.14; p.38, l.17 – p.41, l.43
[27] Ts. p.27, l.43 – p.28, l.32; p.30, l.26 – p.31, l.34
[28] Ts. p.26, l.46-47. (This *voir dire* was initially uncontested and the court found the phonecalls voluntary: Ts. p.30, l.17-20; p.31, l.8-12. The court then re-opened the *voir dire* when Mr. Holsworth changed his position: Ts. p.32, l.43.)
[29] Ts. p.29, l.27-47; p.30, l.29 – p.31, l.12
[30] Ts. p. 32, l.17-29; p. 36, l.19 – p.37, l.3
[31] Ts. p.37, l.32-45
[32] Ruling on Voir Dire, AB Tab 7 (Ts. p.38, l.1)
[33] Ts. p.28, l.9-16

regarding compliance with the Notices.[34]

19. During his cross-examination by Mr. Holsworth, Mr. Hopkins testified that, during their phone calls, he and Mr. Holsworth "talked quite a bit" about the latter's "experiences with the court system."[35] Mr. Hopkins understood over "the number of conversations" between the two men that Mr. Holsworth had "broad" concerns about the "Canadian judicial system in general."[36] During those conversations, Mr. Hopkins "was attempting to get [Mr. Holsworth] to focus on the tax returns because [he] didn't feel like [Mr. Holsworth was] going to have an opportunity to address [his] other more broad legal concerns within this process."[37] When Mr. Holsworth put to Mr. Hopkins that they had had a discussion about "uncertainty" and "how to produce documentation to satisfy the requirements of the CRA and the government", Mr. Hopkins said that he did not recall that, but did recall Mr. Holsworth "talking about the validity of the court system in general and the general validity of things being submitted and accepted."[38]

20. Also on cross-examination, Mr. Holsworth elicited from Mr. Hopkins that, at the time of their phone calls, Mr. Hopkins' "ability to change things for [Mr. Holsworth] at that point in time or give [him] any more time to file the returns was essentially nil." Mr. Hopkins added that, the last time they spoke, the "90 days [to file the returns] had already passed" so he "was talking to [Mr. Holsworth] about next steps."[39]

(c) <u>The Case for the Defence</u>

21. After the Crown closed its case, the trial judge advised Mr. Holsworth that he now had the opportunity to lead evidence, if he so chose.[40] In particular, the judge directed Mr. Holsworth to consider whether he had any evidence to present about what the judge called the two "nuts and bolts issues": whether Mr. Holsworth was properly served with

---

[34] Ts. p.31, l.16-27
[35] Ts. p.49, l.8-11
[36] Ts. p.49, l.19-22
[37] Ts. p.49, l.28-32
[38] Ts. p.49, l.41 – p.50, l.4
[39] Ts. p.50, l.32-38
[40] Ts. p.51, l.8 – p.55, l.12

the Notices of Requirement and whether he subsequently filed the required returns.[41] He instructed Mr. Holsworth:

> The Crown has a fairly simple sort of mathematical process to follow here. It's, were you served with these notices […]. Did you file within the 90-day timeframe? Is there evidence before the court to prove beyond a reasonable doubt those two things? That's really what you need to focus on. All right?
>
> […]
>
> If you think that there is something that would benefit the court and assist your case by taking the witness stand and providing further evidence with respect to – because those are really the only two issues. Were you served, did you file, was the company served, did the company file with respect to these things.[42]

22. Mr. Holsworth opted not to lead any evidence on these matters.[43] Instead, he confirmed Mr. Hopkins' material evidence, saying, "I was served, I received the documentation, I communicated with – tried to resolve the issue with [Mr. Hopkins]."[44] By way of defence, he said that he intended only to advance his argument about the unconstitutionality the *ITA*.[45]

(d) The Submissions of the Parties

23. The Crown made very brief submissions summarizing its evidence in relation to the elements of the offence.[46]

24. Then, at the court's invitation, Mr. Holsworth briefly advanced his position that the *ITA* violates the rule in *Re B.C. Motor Vehicle Act.*[47] This argument transitioned into one that the threat of imprisonment he faced impeded his freedom of expression.[48]

---

[41] Ts. p.54, l.8-37
[42] Ts. p.51, l.27 – p.52, l.3; see also p.53, l.30 – p.55, l.12
[43] Ts. p.53, l.24 – p.55, l.10
[44] Ts. p.55, l.7-9; see generally p.53, l.24 – p.55, l.14; p. 56, l.45 – p.57, l.1
[45] Ts. p.52, l.16 – p.54, l.23
[46] Ts. p.55, l.18-47
[47] Ts. p.56, l.14 – p.58, l.7
[48] Ts. p.57, l.5 – p.59, l.13

(e) The Trial Judgment

25. The trial judge found Mr. Holsworth guilty on all counts, on the basis that there was "no dispute with respect to [the] evidence before the court" and it was "clear" that "Mr. Holsworth was served with respect to the documents and that no tax returns were filed within the 90-day timeframe."[49]

26. The judge also dismissed Mr. Holsworth's constitutional challenge to s. 238(1) of the *ITA*, holding:

> [17] The challenge to the constitutionality of the *Income Tax Act* with respect to reference, *Re B.C. Motor Vehicle Act* is something that has been litigated in prior cases and the *Income Tax Act*'s constitutionality has been upheld many times with respect to these types of challenges and I must follow precedent and reject Mr. Holsworth's arguments with respect the constitutionality of the *Income Tax Act.*

27. With respect to Mr. Holsworth's grievances with Shaw J., the CJC, and government, the judge stated:

> [16] Mr. Holsworth also takes issue with his prior dealings with the justice system and that they have significantly undermined his faith in the courts and in the justice system and caused him to have difficulty in terms of dealing with CRA or these courts in terms of having trust in the process that is before him, and I have sympathy for Mr. Holsworth in terms of his prior dealings. They do not affect what I have to decide with respect to this case. [Emphasis added.]

Sentencing

28. The parties' submissions and the judge's decision on sentence is detailed in the Crown's Statement of Argument on Cross-Appeal, filed October 13, 2021 (File No. 26418). In brief, despite the legislated mandatory minimum fine of $1000 for an offence under s. 238(1) of the *ITA*, the judge imposed a total fine of $5002 for all seven counts – i.e. $1000 each for five of the counts and $2 each for the remaining two counts – to avoid an otherwise "excessive" total fine of $7000.[50]

---

[49] Reasons for Judgment, AB Tab 8, at para. 18
[50] Reasons for Sentence, AB Tab 9, at para. 3

PART II - ISSUES ON APPEAL

29. The Crown would re-state the issues raised in Mr. Holsworth's Notice of Appeal and Statement of Argument filed October 18, 2021, and respond to them, as follows:

I. Did the trial judge fail to act judicially by summarily dismissing Mr. Holsworth's 'constitutional' application regarding his grievances with the judiciary and government?

30. The trial judge did not act unjudicially; he correctly held that Mr. Holsworth's grievances, being irrelevant, had no bearing on trial fairness and, as such, properly exercised his discretion in summarily dismissing the application.

II. Did the trial judge err in law by dismissing Mr. Holsworth's argument that s. 238(1) of the *ITA* violates the rule in *Re B.C. Motor Vehicle Act*?

31. The trial judge did not err; he correctly held that it is settled law that strict liability offences carrying a possibility of imprisonment, such as s. 238(1) of the *ITA*, are *Charter*-compliant.

III. Did the trial judge err in law by failing to reduce the mandatory minimum fines on counts 3 and 4 on Information 26418 and 1-3 on Information 26419 on account of Mr. Holsworth's stated inability to pay?

32. The trial judge did not err in sentencing Mr. Holsworth on these counts; s.238(1)(a) of the *ITA* prescribes a mandatory minimum fine that precluded the imposition of lesser fines on these counts. (The judge's error in imposing $1 fines on the remaining two counts is addressed on the Crown's cross-appeal.)

PART III - ARGUMENT

Standard of Review

33. Mr. Holsworth appeals his summary convictions and sentence pursuant to ss. 813(a)(i) and (ii) of the *Criminal Code*, R.S.C. 1985, c. C-46. By virtue of s. 822(1), the summary conviction appeal court enjoys the powers granted to the Court of Appeal in respect of appeals against convictions in indictable proceedings (s. 686(1)).

34. On the first issue listed in the previous Part, the question for this Court is whether

the judge failed to exercise his discretion judicially in summarily dismissing Mr. Holsworth's *Charter* argument. A discretionary decision to dismiss an application because it evinces no reasonable prospect of success, or does not pertain to the real issues in the trial, is entitled to deference on appeal.[51]

35. The second issue identified above – whether the judge erred in holding that s.238(1) of the *ITA* constitutionally combines strict liability and imprisonment – raises a question of law reviewable for correctness.[52]

36. On the final issue – Mr. Holsworth's sentence appeal – this Court can only "consider the fitness of the sentence appealed against" to the extent that the sentence is not "fixed by law" (s. 822(6)). Mr. Holsworth takes issue with the imposition of mandatory minimum fines that are "fixed by law". There is therefore no basis to assess the fitness of the sentence. This Court's only task is to determine whether the sentence imposed was compliant with the law.

The Offence of Failure to Comply with a Notice of Requirement

37. The Notices of Requirement in this case were issued under s. 231.2(1) of the *ITA,* which provides:

> **231.2 (1)** Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,
>
> (a) any information or additional information, including a return of income or a supplementary return; or
>
> (b) any document.
>
> [Emphasis added.]

38. Section 238(1) of the *ITA* creates a summary conviction offence for failing to

---

[51] *R. v. Orr*, 2021 BCCA 42 at paras. 53-54; see also paras. 46, 48, 57, 64

[52] *R. v. Steeves*, 2019 BCSC 1471 at para. 45 (re: standard of review on appeal of summary conviction under s. 238(1) of the *ITA*)

comply with various provisions of the Act, including s. 231.2(1). Section 238(1) says:

> 238 (1) Every person who has failed to file or make a return as and when required by or under this Act or a regulation or who has failed to comply with […] any of sections 230 to 232 […] is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to
>
> (a) a fine of not less than $1,000 and not more than $25,000; or
>
> (b) both the fine described in paragraph 238(1)(a) and imprisonment for a term not exceeding 12 months.

39. The s. 238(1) offence is one of strict liability.[53] In addition to identity and jurisdiction, the only elements the Crown must prove beyond a reasonable doubt are (1) service of the Notice(s), and (2) the accused's failure to comply with the Notice(s) – both of which are *actus reus* elements. The accused may then seek to establish due diligence, that the time provided to comply with the Notice(s) was unreasonable, or that the demand was not made for purposes related to the administration or enforcement of the Act.[54]

I. The trial judge exercised his discretion judicially in dismissing Mr. Holsworth's 'constitutional' application regarding his grievances with the judiciary and government.

40. It is apparent that Mr. Holsworth's dissatisfaction stemming from his family law proceeding before Shaw J. motivates or permeates much of this appeal; grounds 2-6 of 6 of his Notice of Appeal[55] all appear to be manifestations or extensions of his complaints about Shaw J.'s alleged rejection of transcript evidence, and the associated failure of the CJC and the Minister of Justice to step in. Although Mr. Holsworth has used various legal terminology to articulate these grounds – "abuse of process" (grounds 1 and 5), "question regarding the constitutionality of the court" (ground 2), "miscarriage of justice" (ground 3), and breach of "fundamental justice" (ground 6) – the real complaint in each of these grounds is that neither the trial judge nor the various state actors he has named have addressed his grievances.

---

[53] *R. v. Sedhu,* 2015 BCCA 92 at paras. 4, 26, 37
[54] *Sedhu* at para. 37
[55] AB Tab 10

41. Mr. Holsworth's various grievances with the state are completely unrelated to this criminal proceeding, and the trial judge correctly held that the ones raised before him were irrelevant to Mr. Holsworth's guilt or innocence and could not impact trial fairness.[56] Similarly irrelevant are those raised for the first time in Mr. Holsworth's Statement of Argument before this Court, including those regarding the BC Family Maintenance Enforcement Program,[57] the Law Society of British Columbia,[58] the RCMP,[59] Crown Counsel,[60] and Parliament,[61] most of which he labels as *Charter* arguments. Although it is regrettable that Mr. Holsworth feels he has been repeatedly wronged by various institutions, neither his trial nor this appeal is the appropriate venue to redress his grievances.

42. Far from being unjudicial, the trial judge's summary dismissal of Mr. Holsworth's 'constitutional' application was consistent with the trial judge's "screening function", which was summarized in *R. v. Cody*, 2017 SCC 31 at para. 38:

> For example, before permitting an application to proceed, a trial judge should consider whether it has a reasonable prospect of success. This may entail asking defence counsel to summarize the evidence it anticipates eliciting in the *voir dire* and, where that summary reveals no basis upon which the application could succeed, dismissing the application summarily [citations omitted]. And, even where an application is permitted to proceed, a trial judge's screening function subsists: trial judges should not hesitate to summarily dismiss "applications and requests the moment it becomes apparent they are frivolous" (*Jordan*, at para. 63). This screening function applies equally to Crown applications and requests. As a best practice, all counsel — Crown and defence — should take appropriate opportunities to ask trial judges to exercise such discretion.

43. There is no basis to interfere with the trial judge's exercise of discretion, which was judicial and is entitled to deference on appeal.

---

[56] Reasons for Judgment, AB Tab 8, at para. 16
[57] Mr. Holsworth's Statement of Argument at pp. 6, 7
[58] Mr. Holsworth's Statement of Argument at pp. 3, 9, 11, 15
[59] Mr. Holsworth's Statement of Argument at pp. 3, 7, 16
[60] Mr. Holsworth's Statement of Argument at pp. 3, 4, 6, 12, 17
[61] Mr. Holsworth's Statement of Argument at p. 17

II. The trial judge correctly dismissed Mr. Holsworth's argument that s. 238(1) unconstitutionally violates the rule in *Re B.C. Motor Vehicle Act*.

44. The trial judge was also correct in dismissing Mr. Holsworth's other constitutional argument, that the possibility of imprisonment in s. 238(1)(b) of the *ITA* violates the *Charter* in the manner set out in *Re B.C. Motor Vehicle Act.*

45. The rule from *Re B.C. Motor Vehicle Act* is that "absolute liability and imprisonment cannot be combined."[62] The case does not say that strict liability and imprisonment cannot be combined. To the contrary, it is long-settled law that these *can* constitutionally be combined: where an offence is one of strict liability "then by definition a defence of due diligence must be available to the accused and there will be no infraction of s. 7 of the *Charter*" and "the possible sanction of a term of imprisonment may be retained."[63]

46. As set out above (in para. 39), it is settled law that s. 238(1) of the *ITA* is a strict liability offence permitting defences including due diligence. As a result, there is no basis to hold that it unconstitutionally violates the principle in *Re B.C. Motor Vehicle Act*.

47. In dismissing Mr. Holsworth's argument, the trial judge stated that "the *Income Tax Act*'s constitutionality has been upheld many times with respect to these types of challenges and I must follow precedent."[64] The Crown is not aware of any precedent ruling on the constitutionality of s. 238(1)(b) of the *ITA* in relation to the rule in *Re B.C. Motor Vehicle Act.* What the trial judge perhaps meant was that the combination of strict liability and imprisonment has been upheld as *Charter*-compliant many times, and that he was required to follow precedent in finding that combination constitutional in this case. Alternatively, he may have been referring to the cases that *apply* the rule in *Re B.C. Motor Vehicle Act* to s. 238(1) of the *ITA,* such as *R. v. Sedhu,* 2013 BCSC 2323 at para. 44, which states, "because there are penal consequences pursuant to s. 238 of the *ITA* (for failure to comply with s. 231.2) […] an accused person must have an opportunity to demonstrate due diligence (*Re Motor Vehicle Act (BC)* […])." In any event, the trial judge

---

[62] *Re B.C. Motor Vehicle Act* at p. 492 (emphasis added)
[63] *R. v. Pontes*, [1995] 3 S.C.R. 44 at pp.52-53
[64] Reasons for Judgment, AB Tab 8, p.3, at para.17

came to the correct result: there is no constitutional problem with the strict liability offence in s. 238(1) of the *ITA* carrying a possibility of imprisonment.

48. Although Mr. Holsworth correctly identified the offence in s. 238(1) as a "strict liability offence" at trial,[65] his framing of the issue – that the provision runs afoul of the rule in *Re B.C. Motor Vehicle Act* – suggests that he *may* have mistakenly conflated absolute and strict liability. Albeit only briefly, the trial judge referred to the distinction between them, and related that distinction to *Re B.C. Motor Vehicle Act,* saying:

> Absolute or strict liability, there's different ladders that we have in the law in terms of the types of offences. And so in the B.C. *Motor Vehicle Act* case, an absolute liability offence that had a risk of jail was held to be unconstitutional.

49. While the judge could have elaborated on the nature of strict liability offences and highlighted the availability of the due diligence defence, his failure to do so did not "give rise to a miscarriage of justice."[66] This is because, based on the evidence before the court – and in particular the evidence Mr. Holsworth elicited on cross-examination of Mr. Hopkins – there was no prospect that Mr. Holsworth might have mounted a successful due diligence defence.

50. As detailed above, Mr. Hopkins' evidence was that Mr. Holsworth's "major concern" during their phone calls was his frustration with the justice system generally[67] (presumably the same grievances Mr. Holsworth advances in this proceeding). Mr. Hopkins did not describe Mr. Holsworth making any apparent effort to comply with the Notices of Requirement; to the contrary, Mr. Hopkins said that Mr. Holsworth "stated he didn't know what his plans were in terms of complying with the requirement."[68] Mr. Holsworth cross-examined Mr. Hopkins about several matters, even putting to Mr. Hopkins that Mr. Holsworth had offered to pay the CRA in shareholder's loans from Kootenay Experience Ltd. (which Mr. Hopkins considered immaterial to Mr. Holsworth's failure to file returns).[69] Notably, though, Mr. Holsworth did not seek from Mr. Hopkins,

---

[65] Ts. p.16, l.26
[66] *R. v. Woolsey,* 2021 BCCA 253 at paras. 48, 59
[67] Ts. p.49, l.12
[68] Ts. p.31, l.25-27
[69] Ts. p.48, l.9-31

and Mr. Hopkins did not offer, any evidence suggesting that Mr. Holsworth had taken any – let alone "all"[70] – reasonable steps to comply with the Notices. Instead, the thrust of Mr. Hopkins' evidence on cross-examination was that, in their interactions, Mr. Holsworth was preoccupied with his grievances.

51. Finally, in response to Mr. Holsworth's Statement of Argument at p. 11, it is trite that the trial judge was not required to accede to Mr. Holsworth's argument that the offence provision is unconstitutional simply because the trial Crown was not prepared to make submissions on the issue; judges have a duty to follow the law, regardless of whether the parties articulate it correctly (or at all). For this reason, the fact that the judge applied the law does not show partiality or bias on his part, as Mr. Holsworth asserts.

III. The trial judge correctly imposed the mandatory minimum fine on counts 3 and 4 on Information 26418 and 1-3 on Information 26419.

52. Finally, Mr. Holsworth's first ground of appeal alleges that the judge erred by imposing fines on him despite his inability to pay them. Mr. Holsworth presumably appeals the $1000 fine imposed on each of counts 3 and 4 on Information 26418 and counts 1-3 on Information 24619, as the judge only imposed a fine of $1 for each of counts 1 and 2 on the former Information. (These $1 fines are the subject of the Crown's cross-appeal and are addressed in the Crown's Statement of Argument filed October 13, 2021.)

53. The judge did not err by refusing to tailor the fines to Mr. Holsworth's stated financial means. Section 238(1)(a) of the *ITA* (excerpted above) prescribes a mandatory minimum fine of $1000 for an offence under that section. As set out in *R. v. Wu*, 2003 SCC 73 at paras. 67-69, the correct approach when sentencing an individual who may not have the ability to pay is to impose the statutory fines and allow the individual time to pay them. In this case, the judge appropriately granted Mr. Holsworth five years, until July 15, 2026. If Mr. Holsworth does not pay his fines by that deadline, it will be open to the Crown to consider its options under s. 734 of the *Criminal Code*.

---

[70] *Steeves* at para. 74: due diligence in the context of s. 238(1) of the *ITA* involves the accused proving "on a balance of probabilities that she acted with due diligence and had taken all reasonable steps in attempting to comply with the Notices."

PART IV - NATURE OF ORDER SOUGHT

54. For the reasons above, Mr. Holsworth's appeal should be dismissed. There is no basis to vacate his convictions or decrease his fines on counts 3-4 on Information 26418 and 1-3 on Information 26419. Nor is this the appropriate forum to grant any of the other remedies he seeks – namely a declaration that there has been a miscarriage of justice, a *writ of mandamus* directing the Minister of Justice to heed his complaint to the Canadian Judicial Council, and *Charter* damages.[71]

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Esher V. Madhur

Mark A. Erina / Esher V. Madhur
Counsel for the Respondent

Dated at Vancouver, British Columbia, this 5th day of November, 2021.

[71] Mr. Holsworth's Statement of Argument at pp. 4, 20