

Supreme Court file No.: 26418

Nelson Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
ON APPEAL OF THE VERDICT BY THE HONOURABLE JUSTICE SICOTTE OF THE
PROVINCIAL COURT OF BRITISH COLUMBIA
AT NAKUSP ON JULY 15, 2021

BETWEEN:

TREVOR RUSSELL HOLSWORTH

APPELLANT

AND:

REGINA

RESPONDENT

APPELLANT'S STATEMENT OF ARGUMENT ON APPEAL

APPELLANT

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OVERVIEW

The Crown accused Mr Holsworth of failing to have income tax returns at the CRA office which does not comply with the Income Tax Act s 238(1). During the 5 hearings prior to Trial Mr Holsworth made Abuse of Process arguments and requests for legal and financial assistance which were ignored. At trial Mr Holsworth presented TWO Constitutional Question's with 2 weeks notice but they were both ignored. Mr Holsworth was declared guilty by the Court. All defence arguments were ignored and all Charter of Rights arguments ignored, except for providing a minimal right to freedom of speech. Mr Holsworth appeals the conviction, sentence and alleges abuse of process. In apparent retribution the Crown appealed on the sentence.

The errors in law prompting Mr Holsworth's appeal are straightforward. The court did not provide Mr Holsworth his constitutionally guaranteed Charter of Rights prior to passing sentence. Therefore, the ruling is invalid and has no force of law.

In regards to the abuse of process all argument were ignored, including this right to appeal being arbitrary, ignoring constitutional questions, and ignoring the argument of abuse of process itself.

There is a miscarriage of justice as Crown Prosecution, the BC Law Society, Canadian Judicial Council, RCMP and Minister of Justice are implicated in breaches of the Criminal Code and the Charter of Rights.

The judge failed to act judicially in the resolution of the matter.

The Canadian Judicial Council has made a ruling on the conduct of Judges which contradicts the Charter right to fundamental justice which compromises the integrity of the Court. The Council has ruled that the exercise of judicial discretion is not a matter of conduct so effectively creating unbounded discretion not subject to examination by Parliament, in order to avoid the examination of judicial conduct in the context of the Charter, which is incorrect. The Ruling is the subject of the Constitutional Question #2.

The errors should be corrected by this court issuing a Writ of Mandamus compelling the Minister of Justice to present my Charter complaint to Parliament. The authority of this court is in question until that breach is resolved.

This Appeal does not present the evidence regarding the failures of the public service to recognize the failure of the judiciary to administer the Charter of Rights, the rule of law, and the basics of administrative law to be held to account to their own documentation.

I reserve the right to amend this Appeal to consider new evidence from the Canadian Judicial Council, The BC Law Society, Crown Prosecutor's office, the Minister of Justice, and other public services including RCMP, FMEP, CRA and others that are involved in the administration of justice. All requests for information have been denied.

I have attempted to communicate with the Crown Prosecution Service within their seemingly unbounded discretion and requested alternative dispute resolution procedures and conflict of interest statements and am awaiting response at this time.

In the spirit of the judgment in Pinteau and the CJC's recent paper regarding Self Represented Litigants I request that the Court forgive my lack of familiar form in my written word, the inaccuracies in my arguments or understanding of the complexity of the law but relate to me as a human being, standing before you, pleading for justice and restoration of my rights.

The appeal is necessarily incomplete because of the complexity of the issues at stake, the lack of legal advice, the denial of evidence, the love for the time I spend with my family, the result of the PTSD and mental trauma that I suffered through the abuses of the legal process, the time limit at trial, the page limit at Appeal, and the emotional and financial hardships placed upon Mr Holsworth and his family. I appreciate your efforts to listen to my voice. It means the world to me.

BREACHES OF THE CHARTER OF RIGHTS BY THE EXECUTIVE AND JUDICIARY

PREAMBLE – The Rule of Law

The rule of law is a fundamental principle of Canadian Democracy. The charter states that the Rule of Law is one of the principles upon which Canada was founded. The Rule of Law means that the law applies equally to everyone.

I am reporting crimes in the Executive and Judiciary and the response has been to protect the criminal and attack the victim. No investigations have been initiated. Appealing the decision of the Provincial Court has resulted in retribution by the Crown, but still no response to Charter complaint and Constitutional Questions or my Charter complaints at trial.

“The right to equality before the law is a fundamental principle of justice” *R v. Gustafson*

SECTION 2 - Freedom of Expression

I am attempting to communicate the difficulties working with an administration that claims absolute discretion as being unconstitutional and undemocratic.

“A regulatory requirement to file information and reports may amount to a restriction on freedom of expression where failure to comply is backed by sanctions such as fines or imprisonment” *R v. Harper*

SECTION 6(1) Every citizen of Canada has a right to enter, remain in and leave Canada

FMEP has removed my passport without according me fundamental justice. My letters to Passport Canada explaining the problems in the administration of justice have been ignored.

SECTION 6(2) Every citizen of Canada and every person who has the status of permanent resident of Canada has the right (a) to move in and take up residence in any province, and (b) to pursue the gaining of a livelihood in any province.

FMEP removed my driver's licence without according me fundamental justice. Thankfully they have returned my driver's licence but not before they said "I don't care about your Charter of Rights." and I had to inform them of their duty as Canadians to uphold the Charter and particularly as an employee of the Public Service – that is their Governing document. My driver's licence doesn't really help as I have no reasonable prospect to have any financial mobility.

SECTION 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

I am in constant fear for my life, my liberty has been stolen from me on numerous occasions by the Court and the RCMP, my security of the person is in a state of constant assault. The RCMP have written to me stating that they will "destroy evidence". My children's school have prevented my lawful access to my children. Exposing crimes in the justice system has been used as a weapon to punish me through the courts and the RCMP. I have not been provided fundamental justice as the Canadian Judicial Council claims that Federal Judges have unbounded discretion and refuse to allow that discretion to be properly examined by the only court of competent jurisdiction to do so, which is Parliament.

The test for recusal is "a judge is disqualified if a fair minded observer might reasonably apprehend that the judge MIGHT not bring an impartial mind to the resolution of the question the Judge is required to decide. That principle gives effect to the requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial.....lest the integrity of the judicial system be undermined....the question is one of possibility, not probability."

Based on the evidence before the court it is not possible for a judge to say that he would be impartial in this regard, which is why Parliament has always retained the right to dismiss a Judge for misconduct in order to protect the public from abuses of power.

“Fundamental Justice”

The Supreme Court of Canada considering the meaning of fundamental justice “simply requires a law not be arbitrary, that its adverse effect on people is not disproportionate to any public benefit, and that it does not do more than is necessary to accomplish its purpose” *Canada (AG) v PHS Community Services Society*.

“Procedural irregularity during a criminal trial that is an error of law may amount to a substantial wrong or miscarriage of justice, and can lead to a conviction being thrown out. Such is the strength of the law's concern for proper procedure.” *R v Khan*

“The more serious the infringement of life, liberty and security of the person, the more rigorous the procedural requirements” *R v Suresh*

“Procedural justice requires that the procedures to be followed are well designed to accomplish their purpose. A common design of the litigation procedure is to find out what has happened (the facts) by commenting on the situation (the argument) to persuade the judge to use the appropriate rules (the law) in order to reach a rational decision (the judgment) that does justice to the parties.”

Section 2 (e) of the Canadian Bill of Rights states that no law of Canada “shall be construed or applied so as to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice.”

“Because these protections and assurances are in the constitution they go beyond mere procedure, and become substantive rights that an accused can insist on. Unlike rule of court, judges have no authority to waive these provisions or apply them flexibly. These legal requirements are part of the foundation of

the criminal litigation process”

The test is “compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency” and “would tarnish the reputation of the court” *R v. Conway* or simply where the proceedings are “oppressive or vexatious” *R v. Nixon*

I made abuse of process arguments at every hearing but they were ignored, “maybe at trial” being the only response when not ignored.

Usually a court can defer rulings however where “interests of justice necessitate an immediate decision.” This will include where “the trial court itself is implicated in a constitutional violation” or where “substantial on-going constitutional violations require immediate attention” as stated in *R v. DeSousa*.

SECTION 9 Everyone has the right not to be arbitrarily detained or imprisoned.

I have been detained and imprisoned by this Court at every hearing and by the RCMP twice outside my home placing me in the back of their police cruiser in an effort to intimidate me, without providing me fundamental justice which is of necessity lacking arbitrariness, without complying with the rule of law, and of course no lawyer, or even the words regarding my “rights” to a lawyer.

SECTION 10 Everyone has the right on arrest or detention. b) to retain and instruct counsel.

All lawyers have refused to represent or advise me because of the abuse I have suffered at the hand of the powers of the Executive and Judiciary through the BC Law Society, Canadian Judicial Council, and the office of AG / Minister of Justice. RCMP did not provide or advise me of my right to counsel on arrest.

SECTION 11 d) “to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

“Presumption of Innocence”

The Provincial Court claims I am guilty but they did not provide me a fair hearing by an independent and impartial tribunal, that discretion to be constrained by the Constitution of Canada and the Charter. The Court refused to hear any Charter argument except to provide me a limited freedom of expression. The Judge refused to hear the charter argument presented to the court through the Constitutional Question “I hereby apply for the constitutional remedy outlined in my Charter Notice to be applied, for the constitutionality of the Courts be checked by Parliament and other such remedies be provided as that court determines.” dismissing it and stated “I do not find that there is any realistic prospect of success to your Charter argument in this court” however Judge Sicotte did say “it's a very large argument and it may be very serious but it's not one I can address in Provincial Court with respect to the charges that are before you today.”

The Judge is clearly not independent as he is appointed and paid for by the Crown and yet examination of judicial conduct is being delayed by the Judiciary and the Crown for it's lawful and Constitutional checks and balances by Parliament.

Fair includes a right to “Full Answer and Defense”

A "tribunal which adjudicates upon a person's rights must act fairly, in good faith, without bias and in a judicial temper, and must give to him the opportunity adequately to state his case" *Duke v Queen*

“I am mindful of the right of the accused to make 'full answer and defence' if the court is empowered to reject a Charter defence advanced by the accused without hearing either the evidence which the accused proposes to tender in support of it or full submissions on the issue.” *R v. Mills*

The right to full answer and defence also encompasses “most importantly, the right to full disclosure by the Crown” as stated in *Stitchcombe*.

The Canadian Judicial Council is currently refusing to provide disclosure by means of email, FOI request and a request to Crown Counsel. Although the CJC claims that the “public have a right to receive information pertaining to all judicial proceedings.” Audio recordings of Court hearing are currently being denied. Evidence held by the BC Law Society is also being denied. A response to my Charter complaint is also being denied.

“impartial”

The court was clearly not impartial and certainly not acting judicially when I presented argument and precedent and the crown presented nothing: “Crown is not in a position to make a comment on the Income Tax Act” Page 16 Line 38. The correct judicial response in this situation would be to rule in favor of Mr Holsworth. The Crown could then appeal with the evidence that they failed to present at the Provincial Court. Not the other way around, which reflects an improper standard - Guilty unless you fight to maintain your Innocence. The Court stated “You can chose to appeal my decision” and “at that point you'll be provided with a binder full of documents from Crown counsel.” (page 59 line 24). The trial was not impartial because the Judge showed partiality to his employer, the Crown in his failure to act judicially.

The Judge's conduct brings the administration of Justice into disrepute because it conflicts with the Charter requirement of a fair and impartial trial. The Court seems to indicate that I only have a right to a fair and impartial appeal, which I also argue is not a valid argument as Federal Judges maintain that they have an unbounded discretion in regards to the transcript.

The standard of impartiality defined by the Canadian Judicial Council Statement on Judicial Ethics section 6. “Judges must be and should appear to be impartial with respect to their decisions and

decision making.” and “Impartiality is the fundamental qualification of a judge and the core attribute of the judiciary.”

Conflict of Interests are also defined in Section E, “the concern is with reasonable perception, as well actual conflict of interest.....or in which the judge's interest would give rise in a reasonable, fair minded and informed person, to reasoned suspicion that the judge would not act impartially.”

The appearance of neutrality is “of fundamental importance that justice should not only be done, but manifestly and undoubtedly be seen to be done” quoting *Lord Hewitt* for the umpteenth time in history.

The test for impartiality is that of a “reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that the judge's conduct gives rise to a reasonable apprehension of bias.” *R v RDS*

When I presented the transcript of a hearing to Judge Shaw to conclusively establish that the Plaintiff's lawyer had committed fraud upon the Court, he merely called upon the Plaintiff and requested that she perjure herself, to protect her lawyer. The Canadian Judicial Council in contradiction with the Charter, protected the conduct of Judge Shaw. That is the current acceptable standard for Justice in Canada today. That is wrong. I am here to make the necessary correction to bring the Canadian Justice system back into line with the Charter.

When all lawyers refuse to represent me “Based on the evidence you present I will not represent you now or ever.” and the Department of Justice / AG / Minister of Justice / Crown Prosecution Service and Judges are ALL refusing to respond whatsoever speaks volumes as to the integrity of the system. I wait patiently for leadership to resolve this situation.

SECTION 12 Everyone has the right not to be subject to any cruel and unusual treatment or punishment.

By failing to comply with Fundamental Justice this whole process is unbounded in its discretion. I have made Abuse of Process arguments at every hearing, and to the Minister of Justice and they have been ignored. As mentioned in *R v. Cobb* there is the “right to protection against abuse of process”. Insisting that I attend a Court, under threat of imprisonment, that claims a discretion in regards to the best evidence that a Canadian could provide, is contrary to fundamental justice. As the CJC's own test for judicial conduct states “Is the conduct alleged so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office” and must be “seen from the perspective of the public not the judge”

“The legal concept of discretion implies power to make a choice between alternative courses of action. If only one course can lawfully be adopted, the decision taken is not the exercise of discretion but the performance of a duty. To say that somebody has a discretion presupposes that there is no uniquely right answer to his problem.”

DeSmith's Judicial Review of Administrative Action

“discretion must be exercised in accordance with the law, taking all relevant considerations into account, omitting irrelevant ones, and not influenced by any ulterior motives” *Lord Denning*

“In public regulation of this sort there is no such thing as absolute and untrammelled discretion” *R v Roncarelli*

“In a system based on the rule of law, unfettered governmental discretion is a contradiction in terms”

The Canadian Judicial Council's abusive letter defending Judge Shaw's claim to discretion on the transcript is a claim of absolute discretion by the Judiciary which is unconstitutional.

The Minister of Justice refusing to respond to a Charter complaint to have the matter heard by

Parliament is his duty and the refusal to do so is unconstitutional.

SECTION 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination

The failure to address the constitutionality of the Income Tax Act as required by the Constitutional Question combined with the refusal to apply the “judge made law” of “reasonable excuse” which I provided argument. A delay is not going to resolve this issue as I also made argument that I could see no way forward without help from the court to restore my Rights as a Canadian. There were no arguments presented contrary to that position. Therefore, once again, based on what was before the court and the requirement to act judicially and within the constraints of discretion of the Charter the ruling was incorrect. As Lamar stated in the British Columbia Court of Appeal in the *Reference Re BC Motor Vehicle Act*, “absolute liability, which makes a person liable for an offence whether he or she took steps not to be at fault, violates the principles of fundamental justice. Therefore, any possibility of a deprivation of life, liberty or security of the person from an absolute liability offence offends the Charter.”

Unfortunately There is also a very big problem with equality before the law on the basis of sex. That a woman's word has more power than the transcript is a massive problem. The integrity of the entire family law system is compromised.

There is a problem with equality before the law on the basis of status as a lawyer The BC Law Society is refusing to comply with it's governing document, the BC Law Society Act and “protect the public”

There is a problem with equality before the law on the basis of status as a judge. The Canadian Judicial Council and the Minister of Justice are protecting judges contrary to the governing document, the Judges Act s 65 (2) (b) having been guilty of misconduct, (c) having failed in the due execution of that office, or (d) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office.”

There is a problem with equality before the law on the basis of status as a politician. The Minister of

Justice is currently obstructing justice and not responding to a properly served Charter complaint to address the issue before Parliament. That constitutional question was the subject of a notice of constitutional question properly served with 2 weeks notice before Trial but there was zero response. The RCMP refusing to investigate a report of a crime based simply on the fact that it involved lawyers, RCMP, or the minister of justice is a refusal to do their duty and is unconstitutional as it is contrary to the rule of law and equality under the law. To carry the conversation further and threaten to “destroy evidence” is obstruction of justice.

The continual refusal of the court to facilitate legal representation including the minimum of an amicus curiae in a complex constitutional matter is an abuse of process that unfortunately demonstrates a lack of integrity to the sense of fairness that the public expects from the Judiciary and in its practice of administering justice. My own personal ability to present my case to a similar level as a very well paid professional lawyer and have that matter heard in an adversarial competition with a winner and a loser, against the paid legal army of the Government through the AG's office, Minister of Justice's office AND before a Court whose Judges are paid by the Government AND who claim a discretion to ignore all the evidence that any Canadian could present (through the discretion claimed by the CJC) AND now in the Provincial Court, claim to be able to rule against my arguments and legal precedents, despite NO evidence presented by the Crown, AND a Minister of Justice who is refusing to respond to a Charter complaint is the clearest case of abuse of process amounting to failure to provide fundamental justice.

“The right to equality before the law is a fundamental principle of justice”

SECTION 20(1) Right to communicate and receive services of an institution of Parliament or Government of Canada.

Communication with the Justice & Human Rights Committee of Parliament has been arbitrarily deleted. My Member of Parliament refuses to protect the Charter against Judicial abuse. The AG / MOJ is actively obstructing justice to prevent Parliament being informed of abuses of power in the Judiciary. On a positive note the Parliamentary Ethics Commissioner has accepted my complaint regarding the conduct of the Minister of Justice failing to perform his duty to protect Canadians and protect the integrity of the legal institutions.

SECTION 24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

My Right to enforce the Charter has been obstructed by the Minister of Justice, The Department of Justice, the AG's of BC and Canada, the Crown Prosecution Service and the Provincial Court of BC by denying, delaying and refusing to respond to my properly served Charter complaint and subsequent emails.

As a result of the failure to resolve this issue I made a complaint to the UN Human Rights Tribunal as all efforts to resolve this situation reasonably within Canada have been exhausted. Canada has affirmed it's respect for the UN

Usually a Court can defer rulings however where the “interests of justice necessitate an immediate decision” This will include where “the Trial Court itself is implicated in a constitutional violation” or where “substantial on-going constitutional violations require immediate attention” as stated in *R v.*

DeSousa.

“Conducting a prosecution in a manner that contravenes the community's basic sense of decency and

fair play and thereby call into question the integrity of the system” and “contravenes fundamental notions of justice and thus undermines the integrity of the judicial Process” as determined in *R v. O'Conner*. And affirmed in *R v. Power* “that the Court should be presented with overwhelming evidence that the proceedings under scrutiny are unfair.”

The central issue is “whether the accused can receive a fair trial”

Supreme Court Rules

Rule 6 Paragraph 18 states the appeal document is to be less than 20 pages double spaced which in this case results in a breach of the Charter right of “full answer and defense.”

Rule 6 Paragraph 19 states that “A statement of argument is not required where **(a)** the appellant or respondent is not represented by counsel”. The order by the Court on September 13th was contrary to that rule, contrary to the CJC's Principles for Self-Represented Litigants and contrary to the ruling in *Pintea* as I argued, and confirms the bias against me personally because of the Charter violations that I have experienced at Court, against self-represented litigants in general, and attempting to delay and deny any responsibility. I reserve my rights to make further argument at Appeal.

Open Court Principles

I have been denied access to documents critical to this case, including my personal files from the Canadian Judicial Council, Audio Files from the BC Provincial and Supreme Court, BC Supreme Court files are “missing” Communications from the Minister of Justice, A Response to my Charter complaint at a minimum.

Naturally there is a “presumption , open court principles, particularly criminal trials” and “access to documents in government hands is constitutionally protected only where without the desired access meaningful public discussion and criticism on matter of public interest would be substantially

impeded.”

Open Government Principles

I requested that the Minister of Justice keep me informed of his correspondence in regards to this matter but zero communication was the answer.

The Solution

Declare a Miscarriage of Justice

There is a miscarriage of justice that requires this court to issue a writ of mandamus upon the Minister of Justice to do his duty to “a) protect the public and b) see that the administration of public affairs is in accordance with law”

The test is set out in the case of *Apotex v AG (Canada)* as 1) there must be a public duty to act. 2) The duty must be owed to applicant 3) There is a clear right to the performance of that duty, in particular a) the applicant has satisfied all conditions precedent giving rise to the duty; b) there was i) a prior demand for performance of the duty; ii) a reasonable time to comply with the demand unless refused outright; and iii) a subsequent refusal which can be either expressed or implied, e.g. Unreasonable delay. 4) No other adequate remedy is available to the applicant. 5) The order sought will be of some practical value or effect. 6) the court in the exercise of discretion find no equitable bar to the relief sought. 7) On the “balance of convenience an order in the nature of mandamus should issue.”

I believe it is a straightforward test which is easily satisfied by the evidence before the court.

My understanding is that there is no established procedure for calling upon Parliament to investigate a Judge and alleging breaches of the charter by the Judiciary beyond making a complaint to the CJC who may make recommendations to the MOJ. The Duty still lies with the Minister of Justice independently of the CJC. How this is done is left to the discretion of the Minister but as always his discretion is constrained by the requirement to act in good faith and upholding the rule of law.

The Charter is part of the supreme law of Canada, and any law or government decision inconsistent with it is of no force or effect. Both in the provision of legal advice and in litigation, the AG demonstrates the greatest possible commitment to respecting constitutional rights” Statement by previous AG Jody Wilson-Raybould

Dismissal

To properly address the freedom of expression argument that I made in the Provincial Court, the verdict and the sentence should be struck from the record. Of course with my Charter rights restored I can see no need for a court order compelling me to file income tax statements. I just need the capacity to pay the accountant then it would be my pleasure.

Further Remedies

Immediate payment for Charter Damages to this point including breaches of my security of the person by forcing me to stand trial and ignoring of all abuse of process arguments, refusal in practise to be bound by the Charter of Rights and International agreements such as the UN Charter of Human Rights. Any further remedies that this court feels important to resolve at this time, I leave that to your discretion.