IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Holsworth*,
2023 BCSC 1041

Date: 20230504
Docket: 26418-2
Registry: Nelson

Rex

v.

Trevor Russell Holsworth

Before: The Honourable Madam Justice Lyster

On appeal from: Provincial Court of British Columbia, October 6, 2022 (*R. v. Holsworth*, Nelson Docket No. 26418-1)

Oral Reasons for Judgment at Summary Conviction Appeal

Counsel for the Crown:	M.A. Erina
Appearing on his own:	T. Holsworth
Place and Date of Hearing:	Nelson, B.C. January 11 & 13, 2023
Place and Date of Judgment:	Nelson, B.C. May 4, 2023

[1] **THE COURT:** These are my oral reasons for decision with respect to Mr. Holsworth's summary conviction appeal from his conviction and sentence with respect to four counts of failing to comply with notices of requirement to file corporate tax returns, contrary to s. 238(1) of the *Income Tax Act*, R.S.B.C. 1996, c. 215 [*ITA*]. Mr. Holsworth appeals pursuant to s. 813(a)(i) and (ii) of the *Criminal Code*. By virtue of s. 822(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 [*Code*], this court, sitting as a summary conviction appeal court, has the powers granted to the Court of Appeal in respect of appeals against convictions in indictable proceedings.

[2] Mr. Holsworth was convicted on October 6, 2022, by the learned trial judge (the "Second Trial Judge"). Following conviction, Mr. Holsworth was ordered to pay a fine of $4,000.

[3] I am going to order a transcript of these reasons. I will ensure that all citations and quotations are complete and accurate, and I will add headings for ease of readability.

History of Proceedings

[4] In order to put the issues raised on this appeal in context, it is necessary to set out the procedural history of this matter.

[5] Mr. Holsworth's first trial on these charges and those on a separate information relating to his personal income tax returns was held on July 14, 2021, in Provincial Court before the trial judge (the "First Trial Judge"). At that trial, Mr. Holsworth filed a document entitled "Notification – *Constitutional Question Act*" raising two constitutional issues. One was an application for unspecified constitutional remedies and for the "constitutionality of the courts [to] be checked by Parliament". Those remedies were sought on the basis of Mr. Holsworth's

longstanding grievances with the judiciary, the Canadian Judicial Council, and with government more generally. The other was a challenge to the constitutionality of s. 238(1) of the *ITA* on the basis that it impermissibly combined absolute liability and penal consequences.

[6] The First Trial Judge summarily dismissed the first part of Mr. Holsworth's constitutional application on the basis that Mr. Holsworth's grievances were irrelevant to the charges before him. He also dismissed the challenge to s. 238(1). The trial proceeded, and the First Trial Judge convicted Mr. Holsworth on all counts.

[7] Mr. Holsworth appealed against conviction and sentence. I heard that summary conviction appeal on December 3, 2021. In my decision rendered May 10, 2022, and indexed as *R. v. Holsworth*, 2022 BCSC 1242, I upheld the First Trial Judge's dismissal of Mr. Holsworth's constitutional notice. I ordered a new trial on the basis that the First Trial Judge had failed to inform Mr. Holsworth about the due diligence defence available to him under s. 238(1), which I held resulted in a miscarriage of justice.

[8] Mr. Holsworth applied for leave to appeal my decision to the Court of Appeal. His leave application was dismissed by Madam Justice Newbury on September 29, 2022, in reasons indexed as *R. v. Holsworth*, 2022 BCCA 328.

[9] Prior to the Court of Appeal's decision being rendered on August 10, 2022, a fix date was held before the Second Trial Judge to set the date for Mr. Holsworth's new trial. At that time, Mr. Holsworth sought to have the trial delayed until the Court of Appeal had ruled on his leave application, or alternatively to have the charges against him dismissed. He questioned the legality of my decision ordering a new trial. The Second Trial Judge explained that he was bound by my decision and he scheduled the trial to proceed on October 6, 2022.

[10] The new trial did proceed on October 6, 2022, before the Second Trial Judge. Mr. Holsworth pleaded not guilty. Mr. Holsworth made a *Charter* application. The Second Trial Judge dismissed that application. Mr. Holsworth left the courtroom in protest. On the Crown's application, the trial proceeded to the trial proper in Mr. Holsworth's absence. Mr. Holsworth was, as I have said, convicted and fined.

Mr. Holsworth's *Charter* Challenge at the Second Trial

[11] In order to attempt to understand Mr. Holsworth's grounds of appeal, it is necessary to set out the proceedings at the second trial as they relate to his *Charter* application. In its written statement of argument, the Crown accurately summarized those proceedings at paragraphs 14 through 27 as follows:

> 14. At the onset, Mr. Holsworth alleged that there were "insufficient procedural safeguards to protect fundamental justice in this courtroom" and espoused the following complaints about the justice system:
>
> a. Judges and lawyers engaged in poor behaviour / sharp practices;
>
> b. The Law Society of British Columbia engaged in improper conduct;
>
> c. Lawyers were unable to represent Mr. Holsworth and protect his rights because of a conflict in their "ethical duties";
>
> d. Lawyers were in breach of the *Charter;*
>
> e. The Crown was in breach of the *Charter* for failing to comply with the "enforcement procedure of the *Charter*"; and
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> f. The Attorney General of British Columbia was not complying with the "enforcement procedure" [of the *Charter*].
>
> 15. Before dealing with the *Charter* application, the trial judge explained the relevant procedural and substantive aspects of the trial process to Mr. Holsworth, including the burden of proof and availability of the due diligence defence.
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> 16. The trial judge then asked Mr. Holsworth to frame his argument succinctly so that he (the trial judge) could determine whether it should be heard. However, with respect to Mr. Holsworth's prior experiences with the justice system and, in particular, his allegation of sharp practice by judges and lawyers, the trial judge clarified:
>
> > ... I can't assist you with that today, sir. I amplify. I'm only dealing with this four count information and I can't somehow weigh your prior experiences and decide an outcome with respect to the prosecution based on your prior experiences that you've characterized as - as you have.
>
> 17. The trial judge asked Mr. Holsworth questions to determine what he intended to argue and whether it had been raised at the first trial. Mr. Holsworth said that he served the Attorney General with the "enforcement procedure of the Charter" requesting that "this matter" be heard by Parliament, but never got a response. When asked if he was saying that judges are unable to properly administer the *Charter,* Mr. Holsworth replied:
>
> > Um, because it involved a conflict of interest. Um, no one can be a judge in their cause and [P]arliament is the only body that can provide the *Charter* remedy necessary. So this is not really the correct tribunal to hear the matter that we're having here.
>
> 18. Mr. Holsworth said that this was only the start of his argument. He then stated that the Crown was breaching the *Charter* because it refused to

respond to a constitutional notice he served on it. When asked if this allegation against the Crown was his argument, Mr. Holsworth stated it was just the "initial stage" and that he could "go on and on" about the Charter breaches he had experienced.

19. Mr. Holsworth confirmed that the *Charter* notice he served on the Crown was the Notice. When asked whether that was his argument, Mr. Holsworth replied:

> Amongst other things but that is the basics of why I'm here, is the Crown refused to respond to the *Charter* so this is my enforcement procedure. I'm here in the court protesting a failure of the Crown to comply with the Charter. That is the entire reason we are here.

20. Finally, Mr. Holsworth agreed with the trial judge that his *Charter* application was an expanded or amplified version of the Notice.

Submissions of the Parties on the Charter Application

21. The Crown argued that the Court should summarily dismiss the application because the issues, which had already been dealt with by Justices Lyster and Newbury, had no merit.

22. Mr. Holsworth asserted that he was exercising his freedom of expression to make a political protest. He rejected the notion that his past experiences were irrelevant, and he re-iterated his concern that there were insufficient procedural safeguards to ensure that he received a fair trial. Then, he went on a diatribe wherein he:

a. expressed displeasure with the B.C. Court of Appeal because It refused to debate his issues and denied his right to appeal;

b. alleged that the B.C. Court of Appeal was not operating legitimately according to the *Charter;*

c. stated that it was debatable whether any court had jurisdiction over a person;

d. refused to accept the prior rulings dismissing his constitutional challenge to s.238(1);

e. alleged that Justice Newbury had unlimited and arbitrary discretion and made significant factual and legal errors in her judgment;

f. alleged that Justice Lyster's refusal to issue a writ of mandamus to have "this matter" heard by Parliament was a breach of the *Charter,*

g. questioned the trial judge's judicial independence because his wages are paid by government with tax dollars;

h. stated that he had no rights; that the process is arbitrary: and that he will have no success at the trial because his evidence will be given no weight and his arguments will be disregarded.

Ruling on the *Charter* Application

23. The trial judge began his ruling by carefully reviewing Justice Lyster s reasons, noting that leave to appeal from them had been dismissed. With the exception of due diligence issues, the trial judge found that Mr. Holsworth was seeking to re-litigate the same *Charter* issues that he unsuccessfully raised at the first trial. As such, the trial Judge considered himself bound by the decisions of Justices Newbury and Lyster. He concluded that the application for unspecified *Charter* relief and for Parliament to check the constitutionality of the courts had no chance of success because it was based on matters that had no relevance to the trial, namely Mr. Holsworth's grievances. In the result, he dismissed the application.

24. The trial judge also dismissed Mr. Holsworth's constitutional challenge to s.238(1). He adopted the reasons of Justices Newbury and Lyster that s.238(1) is a strict liability offence that can, therefore, be combined with penal consequences without infringing the *Charter.*

Mr. Holsworth Leaves and the Crown Applies to Proceed Ex-Parte

25. After the *Charter* application was dismissed, the Crown stated its intention to mark documents as exhibits on the trial proper. However, before that process could get started. Mr. Holsworth said he wanted to continue to exercise his right to make a political statement and that the Court needed to hear a "long, long list of political statements about this issue" in order for the case to move forward.

26. Mr. Holsworth refused to accept that the trial judge's ruling on the *Charter* application ended the matter. He said the ruling was a denial of his *Charter* rights, and he threatened to leave the courtroom if his rights were ignored. When it became clear to Mr. Holsworth that he was not going to get his way, he left the courtroom.

27. The trial judge stood the courtroom down for a few minutes to give Mr. Holsworth an opportunity to calm down and, perhaps, change his mind about leaving the courtroom. When the case was recalled, Mr. Holsworth was not present. The trial judge then granted the Crown's application under s. 803 of the *Criminal Code* to hear the trial proper on an *ex-parte* basis.

[12] In his ruling on Mr. Holsworth's *Charter* application, the Second Trial Judge held as follows:

> [11] It is clear that, with the exception of due diligence issues, Mr. Holsworth wishes to again raise the same arguments that have been ruled on on the appeal of the trial judgment by the B.C. Supreme Court and the British Columbia Court of Appeal.
>
> [12] I am bound by their decisions. I conclude that Mr. Holsworth's application has no reasonable prospect of success with respect to his constitutional question in his notice, including arguments relating to abuse of process or writ of *mandamus*, his grievance relating to his family law case. As stated by Madam Justice Lyster at paragraph 49 of her decision, those matters are completely unrelated to this criminal proceeding and are irrelevant to any matter in issue before this trial court.

> [13] I dismiss Mr. Holsworth's constitutional application filed July 15, 2021, which seeks an undefined remedy and which is referred to in paragraph 15 and 16 of the judgment of Madam Justice Lyster and the judgment of Madam Justice Newbury regarding his grievances with the judiciary and the government.
>
> [14] Further, I dismiss Mr. Holsworth's argument that s. 238(1) of the *Income Tax Act* is unconstitutional in providing the possibility of imprisonment for a strict liability offence for the reasons stated by Madam Justice Lyster of the Supreme Court and the Honourable Justice Newbury of the B.C. Court of Appeal.

Grounds of Appeal

[13] On this appeal, Mr. Holsworth does not challenge the fact that the Second Trial Judge proceeded in his absence after he left the courtroom. Mr. Holsworth set out his grounds of appeal in his notice of appeal in the following seven numbered paragraphs:

> 1. Ordering and holding a trial in the face of substantial issues of abuse of process is an abuse of process. The court has an inherent responsibility to protect itself against abuse of process to protect the administration of justice from being brought into disrespect. The Court acknowledged the problem, the argument and the precedent but claimed incorrectly that despite the abuse of process the Court must follow orders, which is obviously incorrect. Everyone, every public servant, and every judge has a responsibility to ensure that the administration of justice is in accordance with the law. The public service code of ethics expects that same. Ignoring the constitution, constitutional arguments, precedent from the Supreme Court of Canada including Cobb and Babos regarding abuse of process. A Judge preferring to just follow the potentially illegal orders of a supreme court judge to hold a trial despite overwhelming evidence of abuses of process the only concern of the judge appeared to be to have the trial comply with the Jordan precedent of 18 months but that flies in the face of the evidence presented that the trial has already been in conflict with that precedent.
>
> 2. Clarification of the fundamental issue of the source for the authority and jurisdiction of crown counsel and the court was asked but no response was received by either Crown or Judge.
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> 3. Questions regarding the fundamental concept of Judicial Independence existing for the protection of the public, and how that relates to trial fairness were left unanswered.
>
> 4. Questions regarding trial fairness in relation to the arbitrary nature of the Appeal process were left unanswered,
>
> 5. Questions regarding the case to meet in regards to the definition and elements of strict liability offences was left unresolved.
>
> 6. Court seemed to be of the opinion that the Appeal Courts have, by the principle of Res Judicata, denied ALL of my Charter rights and refused to even allow me to make a political statement of protest, to exercise my

> freedom of expression as part of my understanding that the administration of justice is operating outside of its constitutional constraints and the refusal to allow that conduct to be legitimately checked, as appropriate in a Democracy.
>
> 7. Crown Counsel continues to claim that they can prosecute whilst refusing to respond to the enforcement procedure of the Charter and refuse to answer a Constitutional Question on the matter. The reasoning appears to be because a judge said it was irrelevant and have refused to engage in debate on the matter at all, or allow its discretion to be legitimately checked by Parliament, the only court of competent jurisdiction in the matter.

[14] In its statement of argument, the Crown reframed Mr. Holsworth's grounds of appeal at paragraph 33:

> 33. The Crown re-frames Mr. Holsworth's Grounds of Appeal as the following issues:
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> i. Was proceeding with Mr. Holsworth's re-trial an abuse of process?
>
> ii. Did the trial judge have jurisdiction to hear this case? (Ground of Appeal No. 2)
>
> iii. Was judicial independence compromised in this case? (Ground of Appeal No. 3)
>
> iv. Did the trial judge err by failing to resolve questions "regarding trial fairness in relation to the arbitrary nature of the Appeal"? (Ground of Appeal No. 4)
>
> v. Did the trial judge err by failing to properly instruct Mr. Holsworth about the due diligence defence? (Ground of Appeal No. 5)
>
> vi. Did the trial judge err by dismissing Mr. Holsworth's *Charter* application? (Ground of Appeal No. 6)
>
> vii. Did the Federal Crown have the authority to prosecute this case? (Grounds of Appeal No. 2 and 7)

[15] I note that I heard no submissions on this appeal with respect to the standard of review that is applicable on this appeal. I adopt what I said on that issue in my earlier summary conviction appeal decision, and I would note that, in the end, the applicable standard does not matter in this case because my conclusions would be the same on any standard of review.

Preliminary Issues on this Appeal

[16] Prior to hearing the merits of this appeal, I heard and decided three preliminary applications brought by Mr. Holsworth.

[17] The first application was Mr. Holsworth's application brought at the outset of the hearing to have me recuse myself. The basis for this application was twofold.

The first was that Mr. Holsworth had suggested that I be removed from the bench in his application for leave to appeal my decision on his first appeal from his previous conviction on these charges, which he submitted might influence my decisions, and that I had failed to deal with his *mandamus* application in that decision. In essence, this first basis was an allegation of personal bias.

[18] The second was that he was making allegations regarding the Minister of Justice, whom Mr. Holsworth considers to be my employer, thereby putting me in a conflict of interest. The second basis, unlike the first, would, if accepted, mean that no superior court judge could hear Mr. Holsworth's appeal, and it is, in essence, an argument of institutional bias.

[19] I dismissed Mr. Holsworth's recusal applications for reasons which I gave at that time. I will not repeat those reasons now, except to say that there was no merit in Mr. Holsworth's recusal application. My reasons for coming to that conclusion can be obtained through ordering a transcript of them should they be required.

[20] The second application was filed by Mr. Holsworth on November 18, 2022. In that application, Mr. Holsworth sought an order that the Crown pay for all transcript expenses for this appeal. He also sought "dismissal at this time for abuse of process." I took this to be an application for a dismissal of the charges on which he was convicted. Finally, he sought in that application information on the procedure within the Crown prosecution office for the assignment of counsel and the resolution of issues of discretion. Underlying this requested order was Mr. Holsworth's position that Crown counsel and indeed, as I understand it, all lawyers are in a conflict of interest.

[21] I delivered oral reasons for my ruling on the November 18, 2022, application. In brief, I found that I was without jurisdiction to order that the Crown pay for the transcripts Mr. Holsworth had already obtained. I found that there was no basis for me to order any information in relation to the issues raised by Mr. Holsworth about the assignment of Crown counsel and their exercise of discretion for the purposes of this appeal. I deferred consideration of Mr. Holsworth's abuse of process argument to the appeal proper, as it substantially overlapped with his grounds of appeal.

[22] Again, I will not repeat my reasons for coming to those conclusions now.

[23] The third application was filed by Mr. Holsworth on December 28, 2022. In it, he requested an order requiring the Canadian Judicial Council to provide the entire contents of his personal files regarding his complaints, including all transcripts, notes, letters, internal memos, and audio files, specifically but not limited to his complaints against Justice Shaw and Justice Humphries. This goes back to Mr. Holsworth's concerns about how those judges dealt with his family law case in or about 2006.

[24] This was, in essence, an *O'Connor* application for a third party to produce records. Mr. Holsworth had not provided notice of this application to the Canadian Judicial Council. As I noted in my oral reasons, this alone would have been a sufficient basis to deny or at least adjourn the application in order to permit Mr. Holsworth to serve the Canadian Judicial Council. I went on, however, to dismiss the application on the basis that the records sought are irrelevant to the appeal before me.

[25] Again, should my reasons for dismissing Mr. Holsworth's December 28, 2022, application be required, a transcript may be ordered.

Analysis

[26] Mr. Holsworth appeals on the basis that ordering a trial in the face of what he calls substantial issues of abuse of process is itself an abuse of process.

[27] It is difficult to discern just what the abuse of process is that Mr. Holsworth complains about. There has been no abuse of process in the manner in which the Provincial Court, this court, and the Court of Appeal have addressed these charges against Mr. Holsworth. Insofar as Mr. Holsworth complains about the trial judge proceeding to fix a trial date, prior to the Court of Appeal issuing its decision on his leave application, there is no merit to his complaint. The trial judge was bound by my earlier decision to hold a new trial and it was appropriate, in light of the concerns about trial delay epitomized in *R. v. Jordan,* 2016 SCC 27, for him to do so without further delay.

[28] More fundamentally, Mr. Holsworth appears to argue that all proceedings in these courts constitute an abuse of process. That position was addressed by

Justice Newbury at para. 29 of her decision dismissing Mr. Holsworth's leave application, where she wrote:

> [29] It is unclear to me whether Mr. Holsworth is intentionally ignoring the clear rule that judges must exercise their discretion judicially and is doing so in order to obfuscate and delay the fact of his convictions under the ITA; or whether he actually believes he was unfairly treated in 2006 and is therefore somehow not bound by court orders or by the duty of all Canadians to file income tax returns. In any event, his leap from the fact that his evidence was not accepted in 2006 to the existence of a vast failure of the justice system and of judges and lawyers to comply with their oaths of office and codes of ethics seems to indicate a disturbing world-view rife with conspiracies and corruption. This does not reflect reality.

[29] Whatever Mr. Holsworth's complaints about how he was treated in his family law case in 2006, those complaints do not provide a basis for arguing that the present proceedings, which deal with entirely separate and distinct issues under the *ITA*, are an abuse of process. This is not a forum or proceeding within which those complaints can be addressed.

Jurisdiction of Crown Counsel and the Court

[30] I turn to Mr. Holsworth's second ground, which is described in his notice of appeal as:

> Clarification of the fundamental issue of the source for the authority and jurisdiction of crown counsel and the court was asked but no response was received by either Crown or Judge.

[31] It is difficult to understand this ground of appeal. To the extent that Mr. Holsworth is arguing that the Second Trial Judge lacked jurisdiction, that argument is without merit.

[32] At trial, Mr. Holsworth asked the trial judge, "I'm asking [you] where your authority to govern me comes from?" The Second Trial Judge does not appear to have directly answered that question, but he was not obliged to do so.

[33] The Provincial Court is a statutory court created by the *Provincial Court Act*, R.S.B.C. 1996, c. 379. Provincial Court judges are appointed by the provincial government and they exercise powers given to them by laws enacted by the federal and provincial governments. This includes, pursuant to Part XXVII of the

Code, jurisdiction as a summary conviction court to hear summary conviction offences, including an offence under s. 238 of the *ITA*.

[34] The Second Trial Judge clearly had jurisdiction to try these charges against Mr. Holsworth. Mr. Holsworth's refusal to recognize the Second Trial Judge's jurisdiction to do so does not alter that fact.

Judicial Independence

[35] This ground is described in Mr. Holsworth's notice of appeal as:

> Questions regarding the fundamental concept of Judicial Independence existing for the protection of the public, and how that relates to trial fairness were left unanswered.

[36] Once again, it is difficult to discern what is intended by this ground of appeal. Mr. Holsworth appears to believe that because judges are paid by the government that they lack independence. I addressed the substance of this position in dismissing Mr. Holsworth's recusal application. There is no merit in the argument that because judges, including the Second Trial Judge, are paid by government, that they lack judicial independence.

Trial Fairness and the Arbitrary Nature of the Appeal Process

[37] This ground is described in Mr. Holsworth's notice of appeal as:

> Questions regarding trial fairness in relation to the arbitrary nature of the Appeal process were left unanswered.

[38] Mr. Holsworth was provided a fair trial by the Second Trial Judge. In particular, the Second Trial Judge took time to explain the trial process to him and, in particular, to explain the due diligence defence. He provided Mr. Holsworth with a full and fair opportunity to make submissions in support of his *Charter* application, and he retired to review the parties' arguments and materials before providing a reasoned decision dismissing that application.

[39] Mr. Holsworth does not recognize the authority of the appellate courts that have ruled on his appeals. The Second Trial Judge, however, was bound by those decisions and he was without jurisdiction to address any of Mr. Holsworth's concerns about the appellate process.

[40] In oral submissions, Mr. Holsworth explained that he saw my decision finding that there had been a miscarriage of justice in his first trial, and on that basis ordering a new trial, as the clearest continuation of an abuse of process as, in his submission, in doing so I threatened him with being imprisoned. Mr. Holsworth does not appear to recognize that he won the first appeal before me, and that the appropriate remedy for the error I found the First Trial Judge to have committed was a new trial. I was not threatening him with imprisonment; that is, the potential penalty under the *ITA*. The order that there be a new trial was not an abuse of process.

Elements of the Offence and Strict Liability

[41] Mr. Holsworth frames this ground in his notice of appeal as:

> Questions regarding the case to meet in regards to the definition and elements of strict liability offences was left unresolved.

[42] There is no merit to this ground of appeal. The Second Trial Judge explained the due diligence defence to Mr. Holsworth twice: first in his preliminary instructions and, second, in his ruling on the *Charter* application. The explanation in his ruling was as follows:

> [15] I wish to make it clear that this ruling does not interfere with the right of Mr. Holsworth to raise the defence of due diligence to the counts referred to in the Information. The offences are strict liability offence and therefore the defence of due diligence is available to Mr. Holsworth. An accused can successfully defend a charge if he can show that he exercised due diligence in attempting to comply with a notice. To succeed, he has only to establish on a balance of probabilities that he took the reasonable steps which would be expected of a reasonable person to comply with the notice.

[43] So far as the elements of the offence are concerned, Mr. Holsworth raised this issue during his submissions before the trial judge on the *Charter* application. Crown counsel indicated that they would deal with that issue at the end and the trial judge agreed to that suggestion. Given that Mr. Holsworth chose to leave the courtroom after the Second Trial Judge gave his ruling on the *Charter* application, I do not believe that he can be heard to complain that he did not receive whatever further explanation would have been forthcoming after that.

Refusal to Recognize *Charter* Rights

[44] Mr. Holsworth's sixth ground is framed in his notice of appeal as follows:

> 6. Court seemed to be of the opinion that the Appeal Courts have, by the principle of Res Judicata, denied ALL of my Charter rights and refused to even allow me to make a political statement of protest, to exercise my freedom of expression as part of my understanding that the administration of justice is operating outside of its constitutional constraints and the refusal to allow that conduct to be legitimately checked, as appropriate in a Democracy.

[45] In my view, this ground really sums up Mr. Holsworth's views about the judiciary and the Crown, and what he asserts are their failures to comply with the *Charter*.

[46] Fundamentally on this appeal, Mr. Holsworth seeks to rehearse and reargue the same issues that have been ruled on and dismissed by the First Trial Judge on the first trial, by me on the first appeal, by Newbury J.A. on the leave application, and by the Second Trial Judge at the retrial.

[47] Mr. Holsworth is candid about his reasons for doing so. In the course of his submissions before the Second Trial Judge on the *Charter* application, Mr. Holsworth stated that "I'm . . . in the court protesting a failure of the Crown to comply with the *Charter*. That is the entire reason we are here". Later he stated "…I think it's important to realize that this is a protest, this is a political protest, right? Um, I'm exercising my freedom of expression".

[48] It is clear from Mr. Holsworth's submissions before the Second Trial Judge that he knew that his *Charter* application would be dismissed. He said that he was:

> …very clear the weight of my evidence is zero. That the court will disregard everything. And I'm very clear that the court will disregard all of my arguments. Because I've presented my arguments and Crown has presented none and I've still been ruled against. They've still pulled … precedent and it's still wrong. …

[49] He further stated that:

> …this process is arbitrary because it relies on, we're going to do the same thing again. We're going to go to this court. I'll appeal to the Supreme Court. I'll Supreme -- appeal to the Court of Appeal who has an arbitrary right to just say, against all the evidence and all my argument.
>
> So you're correct. And this is the whole point of why I'm here, is to prove that I have no rights…

[50] After the Second Trial Judge made his ruling dismissing Mr. Holsworth's *Charter* application, Mr. Holsworth stated:

> Excuse me, just one second. I -- I have my *Charter* freedom of expression that I can continue to express in this court. That is my right, to make a political statement in this courtroom.

[51] After the Second Trial Judge repeatedly told Mr. Holsworth that he had made his ruling, Mr. Holsworth said that he would walk out of the courtroom, which he did. He did not return.

[52] Mr. Holsworth refuses to recognize the authority of any court to rule on the charges against him. Indeed, I think it is fair to say that Mr. Holsworth refuses to recognize the authority of any of the courts of this country. He does not acknowledge the binding nature of appellate judicial decisions. He goes to court not to answer the charges against him but, as he has said, to engage in political protest. Like every Canadian, Mr. Holsworth has a *Charter*-protected right to freedom of expression. He does not have the right to hijack court proceedings brought against him to express his views about the judiciary and lawyers, when those views are wholly irrelevant to the charges against him.

[53] Mr. Holsworth's grounds of appeal on this appeal fundamentally repeat the arguments he has made, and which have been dismissed, in every court that has heard this matter. The Second Trial Judge was correct in concluding that his *Charter* application had no reasonable prospect of success. This was a proper exercise of a trial judge's "screening function" as described in *R. v. Cody*, 2017 SCC 31 at para. 38, which is entitled to deference on appeal.

[54] I note that very recently, in *R. v. Haevischer,* 2023 SCC 11 [*Haevischer*], the Supreme Court of Canada revisited the standard applicable to applications to summarily dismiss applications in criminal proceedings. In that case, writing for a unanimous court, Justice Martin ruled that an application in a criminal proceeding should only be summarily dismissed if the application is "manifestly frivolous". She explained at para. 67 that, when applied, "the 'frivolous' part of the standard weeds out [the] applications that will necessarily fail."

[55] At para. 69, she went on to write that "the word 'manifestly' . . . capture[s] the idea that the frivolous nature of the application should be obvious." According

to Justice Martin at para. 71:

> . . . If the frivolous nature of the application is not manifest or obvious on the face of the record, then the application should not be summarily dismissed and should instead be addressed on its merits.

[56] By adopting this rigorous standard of manifestly frivolous, a judge may dismiss applications that would never succeed and which would, by definition, waste court time. However, it also protects the fair trial rights of accused persons by ensuring that applications which might succeed are decided on their merits.

[57] *Haevischer* was decided only last week, and I have of course heard no argument on whether the manifestly frivolous standard described in *Haevischer* is applicable to the Second Trial Judge's ruling dismissing Mr. Holsworth's *Charter* application. It is not necessary for me to hear argument on that issue.

[58] If the manifestly frivolous standard is applicable, then the Second Trial Judge would have been correct to dismiss the application as manifestly frivolous. Mr. Holsworth's application could never have succeeded and was obviously going to fail.

Crown Counsel's Authority to Prosecute

[59] Mr. Holsworth frames his seventh and final ground of appeal as follows:

> 7. Crown Counsel continues to claim that they can prosecute whilst refusing to respond to the enforcement procedure of the Charter and refuse to answer a Constitutional Question on the matter. The reasoning appears to be because a judge said it was irrelevant and have refused to engage in debate on the matter at all, or allow its discretion to be legitimately checked by Parliament, the only court of competent jurisdiction in the matter.

[60] Federal Crown counsel have the authority to prosecute offences under the *ITA* pursuant to the *Director of Public Prosecutions Act*, SC 2006, c. 9, s 121. They are not obliged to engage in "debate" with a person accused of an offence. Further, Crown counsel did respond to Mr. Holsworth's "Notification, *Constitutional Question Act*". They told him it was irrelevant. While that was not the answer Mr. Holsworth was looking for, it was an answer.

Conclusion

[61] For these reasons, Mr. Holsworth's appeal is dismissed.

"L.M. Lyster J."

LYSTER J.