

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. O.A. P., 2009 NSCA 93

Date: 20090915

Docket: CAC 297546

Registry: Halifax

Between:

O. A. P.

Applicant

v.

Her Majesty the Queen

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Restriction on publication: Pursuant to s. 486(3) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46, as am.

Judge: The Honourable Justice Fichaud

Application Heard: February 19, 2009, in Chambers

Held: Application under s. 684 is dismissed.

Counsel: O. A. P., the Appellant In Person
Mark Scott, for the Respondent
Glen Anderson, Q.C. for the Attorney General of Nova Scotia
Walter Yeadon, for Nova Scotia Legal Aid

Publishers of this case please take note that Section 486(3) of the **Criminal Code** applies and may require editing of this judgment or its heading before publication. The subsection provides:

(3) **Order restricting publication** - Subject to subsection (4) where an accused is charged with

(a) an offence under section 151, 152, 153, 155, 159, 160, 170, 171, 172, 173, 210, 211, 212, 213, 271, 272, 273, 346 or 347,

(b) an offence under section 144, 145, 149, 156, 245 or 246 of the **Criminal Code**, chapter C-34 of the of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(c) an offence under section 146, 151, 153, 155, 157, 166 or 167 of the **Criminal Code**, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988,

the presiding judge or justice may make an order directing that the identity of the complainant or of a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

Decision:

[1] Mr. P. was convicted of several assault and related charges under the *Criminal Code* respecting *. He appealed his convictions to the Court of Appeal. He sought legal representation for the appeal through Nova Scotia Legal Aid, which initially rejected his application. Mr. P. applied to this court under s. 684 of the *Code* for the appointment of counsel, and I heard this application in chambers on February 19, 2009.

[2] At the hearing of the application, counsel for the Nova Scotia Department of Justice (Province) acknowledged that Mr. P. did not have the financial resources to retain counsel, and that the argument Mr. P. proposes as a ground of appeal (incompetent trial counsel) has sufficient complexity that, in the interests of justice, appeal counsel likely would be required in order to fully present submissions to the Court of Appeal. The Province submitted, however, that the s. 684 application was premature because Mr. P. had not exhausted his appeal process to the Legal Aid Appeal Committee. I reserved my decision, pending the completion of Mr. P.'s appeal to the Legal Aid Appeal Committee. The Nova Scotia Legal Aid Commission was to notify the court of the result of Mr. P.'s appeal to the Legal Aid Appeal Committee.

[3] On March 19, 2009, the Director of the Nova Scotia Legal Aid Commission wrote to the Registrar of the Court of Appeal, copied to Mr. P., stating:

By this letter I am confirming that the Nova Scotia Legal Aid commission has agreed to authorize a Legal Aid Certificate so that Mr. P. may retain counsel of his choice in private practice for representation on his appeal of conviction.

[4] Given this position of Nova Scotia Legal Aid, it is unnecessary that I make an order under s. 684. Mr. P. will be entitled to legal representation on his appeal in accordance with the terms of Nova Scotia Legal Aid's letter of March 19, 2009. I dismiss Mr. P.'s application under s. 684.

Fichaud, J.A.