

**NOVA SCOTIA COURT OF APPEAL**

Cite as R. v. Lockerby, 1999 NSCA 17

**BETWEEN:**

BRIAN LOCKERBY	)	
	)	appellant in person
Appellant	)	
	)	
- and -	)	
	)	
HER MAJESTY THE QUEEN	)	Kenneth W.F. Fiske, Q.C.
	)	for the respondent
Respondent	)	
	)	
	)	
	)	Appeal heard:
	)	May 20, 1999
	)	
	)	Judgment delivered:
	)	May 20, 1999
	)	
	)	

**BEFORE THE HONOURABLE JUSTICE FLINN IN CHAMBERS**

**FLINN J.A.: (Orally in Chambers)**

[1] On August 7<sup>th</sup>, 1998, the appellant was convicted by Judge Digby of the Provincial Court of Nova Scotia of an offence contrary to s. 253(b) of the **Criminal Code of Canada**; for having the control of a motor vehicle while his blood alcohol level exceeded .08. In addition to imposing a fine on the appellant, Judge Digby ordered a six month driving prohibition under s. 259 of the **Criminal Code**.

[2] The appellant appealed his conviction to the summary conviction appeal court. The driving prohibition was stayed pending the hearing of that appeal. On April 9<sup>th</sup>, 1999, Justice Davison dismissed the appellant's appeal.

[3] The appellant has appealed the decision of the summary conviction appeal court to this Court, and seeks a stay of the driving prohibition pending the hearing of his appeal.

[4] Section 261 of the **Criminal Code** provides as follows:

261. (1) Where an appeal is taken against a conviction or discharge under section 730 for an offence committed under any of sections 220, 221, 236, 249 to 255 and 259, a judge of the court being appealed to may direct that any order under subsection 259(1) or (2) arising out of the conviction or discharge shall, on such conditions as the judge or court may impose, be stayed pending the final disposition of the appeal or until otherwise ordered by that court.

(2) Where conditions are imposed pursuant to a direction made under subsection (1) that a prohibition order under subsection 259(1) or (2) be stayed, the direction shall not operate to decrease the period of prohibition provided in the order made under subsection 259(1) or (2).

[5] To succeed on this application the appellant must demonstrate that his

appeal is not frivolous, and that the continuance of the driving prohibition is not necessary in the public interest.

[6] This is a summary conviction appeal and, therefore, the appellant's appeal is restricted to a question of law alone. While I have some reservations as to whether all of the appellant's grounds of appeal involve a question of law alone; and without expressing any views as to the likely success, or otherwise, of his appeal, I am satisfied that the appeal is not frivolous.

[7] Whether the continuation of the driving prohibition, in this particular case, is not necessary in the public interest, presents a little more difficulty. I include in the phrase "public interest", public confidence in the effective enforcement and administration of the criminal law. This is the appellant's second conviction under s. 253(b) of the **Criminal Code**, although his first was six years ago.

[8] In the appellant's affidavit which he filed in support of this application he deposes:

**THAT** if the driving prohibition and suspension were not to be stayed pending the decision in my appeal it would cause me great hardship. I have to travel a considerable distance to get to work. It is at least a half-hour drive. There is no public transportation to my workplace. Since my Federal driving prohibition has been in effect I have been carpooling to work. Unfortunately, the person that I carpool with is leaving and so I have no feasible way to get to work.

[9] The appellant advised the Court that his carpool assistance is no longer available.

[10] I am going to exercise my discretion, here, in a manner which satisfies my own concern with respect to the public interest, and will also permit the appellant to drive to and from his employment until his appeal is heard. I will, therefore, grant the appellant's application; however, for limited purposes. The driving prohibition will be stayed pending disposition of this appeal (which is scheduled to be heard October 1, 1999) but for the purposes, only, of permitting the appellant to drive from his home to his place of employment at Pratt & Whitney Canada Inc., and from there back to his home; and, further, in the event of a medical emergency, to a hospital, clinic or other medical facility. For all other driving, the prohibition is not stayed.

Flinn, J.A.