

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Sandeson*, 2024 NSCA 72

Date: 20240724

Docket: CAC 523366

Registry: Halifax

Between:

William Michael Sandeson

Appellant

v.

His Majesty the King

Respondent

Judge: Bourgeois, J.A.

Motion Heard: July 18, 2024, in Halifax, Nova Scotia in Chambers

Held: Motion for state-funded counsel dismissed

Counsel: William Michael Sandeson, appellant in person
Glenn R. Anderson, K.C. and Terry Kelly for the Attorney
General of Nova Scotia
Timothy O’Leary, for the respondent on watching brief

Decision:

[1] On July 18, 2024 I heard a motion brought by the appellant, William Michael Sandeson, seeking the appointment of state-funded counsel. The motion was opposed by the Attorney General of Nova Scotia, primarily on the basis that the appellant had not established he lacked the means to obtain legal counsel to advance his appeal.

[2] For the reasons to follow, I agree with the Attorney General, and dismiss the appellant's motion.

Background

[3] In February, 2023, the appellant was convicted following trial by judge and jury of second-degree murder. He was subsequently sentenced to life imprisonment with parole eligibility set at 15 years. This was the appellant's second trial arising from the killing of Taylor Samson in August, 2015. The appellant had been tried and convicted of first degree murder, but that conviction was overturned by this Court on appeal and a new trial ordered (*R. v. Sandeson*, 2020 NSCA 47).

[4] The appellant has filed a Notice of Appeal challenging his most recent conviction on a number of grounds. The Crown has also filed a Notice of Cross-Appeal.

[5] The appellant made an application to the Nova Scotia Legal Aid Commission for legal counsel to advance his appeal. His application was denied, it being determined he did not meet the financial requirements to qualify for legal aid assistance. The appellant unsuccessfully appealed the denial to the Appeal Committee of the Nova Scotia Legal Aid Commission.

[6] The appellant has filed an affidavit in support of his motion for state-funded counsel. The Attorney General has also provided additional documentation, collected and compiled with the consent of the appellant. The appellant consented to the admission of these additional documents and relied on them as evidence in support of his motion.

[7] There is no dispute the appellant has significant assets. At the time of his incarceration, he held 8.669 Bitcoins. In February, 2024, a portion of the Bitcoins

were liquidated and the sum of \$198,000 is being held in his solicitor's trust account. Both these funds and the remaining 4.92916119 Bitcoins are subject to a Preservation Order. The current value of the remaining Bitcoin, which is subject to fluctuation, is at least \$443,624. Together with the funds held in trust, the appellant has assets valued in excess of \$640,000.

[8] The Preservation Order was sought at the initiative of the mother and brother of Taylor Samson, the plaintiffs in a civil action launched against the appellant. The Preservation Order prioritizes the use of the liquidated funds and remaining Bitcoins as follows: 1) payment to the IT firm assisting with the liquidation of the Bitcoin; 2) the legal fees of the appellant's civil lawyers in responding to the Samson claim; 3) any ordered payment of funds to the Samson plaintiffs; and 4) the remainder of the funds will be released to the appellant.

[9] A judicial settlement conference in relation to the Samson claim is scheduled in August, 2024. If settled, then the appellant will be in a position to pay the prioritized matters, and receive the balance of the remaining funds or Bitcoins for his own use. It is impossible at this juncture to identify precisely what will be remaining, however, the appellant agreed during his cross-examination that after the payment of the prioritized expenses, he will be left with assets of between \$200,000 and \$300,000 for his own use. Depending on the quantification of the Samson claim, by far the largest prioritized claim, the amount available to the appellant, could be higher.

[10] The appellant submits he has a number of debts which surpass the value of whatever may remain of his Bitcoin investment. He submits that he will be subject to the payment of capital gains tax on the liquidation of the Bitcoin, which he asserts will be in excess of \$171,000. He further notes indebtedness as follows:

- \$19,330 owing to Nova Scotia Legal Aid as a cost-contribution to counsel provided at his first trial;
- \$80,000 owing on a student line of credit;
- \$20,000 owing as combined federal and provincial student loans; and
- \$177,000 owing to his mother, Laurie Sanderson for his previous legal expenses.

[11] The appellant asserts the quantum of his debts will far exceed the value of his remaining investments and that he has demonstrated he does not have the means to retain legal counsel to advance his appeal.

Legal Principles

[12] Section 684(1) of the *Criminal Code* provides:

Legal assistance for appellant

684(1) A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

[13] The approach to be taken when considering a motion under s. 684(1) is well established. There are two inquiries:

1. whether an appellant has sufficient means to obtain legal assistance; and
2. whether it is desirable in the interest of justice that the appellant have legal assistance with the appeal.

[14] As noted by Justice O'Brien in *R. v. L.H.*, 2023 NLCA 4, the scope of the first inquiry, sufficient means, is expansive:

[17] The scope of what is to be included in an applicant's "means", when determining whether an applicant has sufficient financial means to obtain legal assistance, has been considered in various contexts, and has received an expansive interpretation.

[18] For example, in *R. v. Campbell*, 2020 ONCA 573, it was indicated that an applicant must have "exhausted all other means of paying for counsel" before government-funded counsel is assigned under section 684 (para. 8). See also *R. v. Staples*, 2016 ONCA 362, at paragraph 40. In *R. v. Lawson*, 2017 BCCA 288, it was observed that an applicant "must establish that he or she does not have the means to fund the appeal" (para. 17). Relevant factors identified in *Lawson* included the applicant's "personal financial circumstances and ability to raise funds from other sources" (para. 18). In *R. v. MacLean*, 2017 NSCA 86, the applicant was questioned on whether he had "inquired into mortgaging his home"

to obtain funds to pay the cost of legal counsel on appeal. The Court determined that the applicant had “not established that retaining a lawyer for the proceedings in this Court is beyond his means” (paras. 30-33).

[15] The interest of justice inquiry engages a number of considerations, including: i) the merits of the appeal; ii) the complexity of the appeal; iii) the appellant’s capability; iv) the Court’s role to assist; and v) the responsibility of the Crown to ensure that the applicant is treated fairly.

[16] As will be demonstrated herein, it is not necessary to consider the interest of justice inquiry in the present case.

Analysis

[17] The appellant carries the burden to establish he does not have the means to obtain legal counsel. In my view, he has failed to do so. Based on the material before me, it is more probable than not, the appellant will have the resources to obtain counsel for his appeal.

[18] The appellant has not provided a sufficient evidentiary basis in support of his claim of impecuniosity, and in particular, the extent of his current or future indebtedness. Several examples are illustrative:

- The appellant claims that he will be subject to capital gains tax in the amount of \$171,000 in relation to the liquidation of the Bitcoin. Although I am prepared to accept there may be tax implications, the appellant has provided no evidence, other than his own submission, as to the quantum of tax liability that may arise;
- The appellant claims that he has an indebtedness of \$80,000 in relation to a student line of credit, but he provided no supporting documentation in relation to this debt;
- However, the appellant’s mother Laurie Sandeson filed an affidavit sworn May 16, 2024 which attached a statement from a CIBC Personal Line of Credit showing a balance of \$78,518 owing. She provided no explanation of the document in her affidavit. Even if I assume this is the line of credit the appellant references as being an outstanding debt, the statement raises additional questions. Firstly,

the statement is not a “student line of credit”, but rather, a “Personal Line of Credit” in the names of both William Sandeson and Laurie Sandeson. More importantly, the statement is dated September 9, 2015. There is no evidence regarding the current balance of this indebtedness, or whether it is the sole debt of the appellant; and

- Although the appellant says he owes his mother \$177,000 in relation to defence costs, that assertion is not clearly confirmed in her affidavit. There is no written agreement supporting the existence of an indebtedness between the appellant and his mother, nor that such debt would take priority over other financial obligations, such as the further payment of legal counsel.

[19] Although I accept the appellant has some outstanding debts, there is nothing before me that establishes he is obligated to immediately pay out the entirety of the outstanding balances. He has presented no evidence relating to his efforts to settle the balances owing for a lesser amount, or to structure a repayment plan. It would appear that none of his debtors have sought judgments against him. Assessing the appellant’s ability to pay for legal counsel is not as simple as deducting his claimed debts against the value of his assets.

[20] In his affidavit the appellant set out information regarding the potential costs of advancing an appeal. One calculation showed a cost of up to \$120,000, another was in excess of \$300,000. However, the appellant provided no estimates from counsel. He did assert that he had discussions with one lawyer that was prepared to take on the appeal if a legal aid certificate had been granted. The appellant has not made inquiries whether that same counsel would be now prepared to advance the appeal at the same rate.

[21] The appellant has assets valued at over \$640,000. Although certain expenses and the Samson claim must be paid therefrom, a significant balance will remain available to the appellant. The appellant has not demonstrated that his debts will preclude him from obtaining counsel for the appeal, or that he has exhausted all other sources of financial assistance.

Conclusion

[22] The motion for state-funded counsel is dismissed.

Bourgeois, J.A.