

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Gallant*, 2025 NSCA 44

Date: 20250611

Docket: CAC 537238

Registry: Halifax

Between:

Shawn R. Gallant

Appellant

v.

His Majesty the King

Respondent

Judge: Bourgeois, J.A.

Motion Heard: May 29, 2025, in Halifax, Nova Scotia in Chambers

Held: Motion for state-funded counsel dismissed

Counsel: Shawn R. Gallant, self-represented appellant
Jillian Toonders, for the respondent on watching brief
Glenn Anderson, K.C., for the Attorney General of Nova
Scotia

Decision:

[1] On May 29, 2025, I heard a motion brought by the appellant, Shawn R. Gallant, seeking the appointment of state-funded counsel pursuant to s. 684(1) of the *Criminal Code*. The Attorney General of Nova Scotia opposed the motion, and I reserved my decision.

[2] For the reasons to follow, I dismiss the motion.

Background

[3] In August, 2022, the Registry of Motor Vehicles sent Mr. Gallant a letter in which he was requested to provide a Driver's Medical Examination Report. The deadline for filing the report was September 13, 2022. Despite receiving the letter, Mr. Gallant did not provide a report.

[4] The Registry of Motor Vehicles sent Mr. Gallant a letter on October 17, 2022, in which it advised his license was suspended. On November 5, 2022, Mr. Gallant was stopped by police and charged with driving while his license was suspended, contrary to s. 287(2) of the *Motor Vehicle Act*.¹

[5] On March 15, 2024, Mr. Gallant was convicted by a Justice of the Peace and fined \$237.50. She found Mr. Gallant was aware from the first letter that the Registrar of Motor Vehicles had concerns regarding his driving abilities and he had not been diligent in monitoring, after the September 13th deadline, the status of his license.

[6] Mr. Gallant appealed his conviction and on September 24, 2024, the Summary Conviction appeal judge, Justice Jeffrey R. Hunt of the Supreme Court of Nova Scotia, dismissed the appeal and upheld the conviction and fine.

[7] At both his trial and on the summary conviction appeal, Mr. Gallant had argued he had not received the second letter from the Registry of Motor Vehicles advising of his license suspension, as he was not living at his home due to the lingering effects of a recent hurricane. In short, he was not aware his license was suspended and, therefore, should not have been convicted.

¹ R.S.N.S. 1989, c. 293, as amended.

[8] Justice Hunt permitted Mr. Gallant to introduce fresh evidence establishing he had been residing in a hotel at the time the letter advising of his suspension had been sent to his home. However, after considering the material before him and the submissions of the parties, Justice Hunt concluded Mr. Gallant had failed to show why the Justice of the Peace's finding he had not exercised due diligence in ascertaining the status of his license ought to be set aside.

[9] In particular Justice Hunt upheld the conviction, relying on the legal principles stated in *R. v. Wen*, 2012 NSPC 57 and other decisions. He determined those cases "were examples of factual situations where trial courts were prepared to find that while the accused may not have received suspension notices they could nonetheless be convicted because they had failed to take reasonable steps to ascertain their licensing status in light of what they knew or should have known about issues they were having with the Registry of Motor Vehicles." He concluded there was no basis to interfere with the Justice of the Peace's decision.

[10] Mr. Gallant appeals for a second time to this Court and asks that I order he be provided with legal counsel for the appeal.

Legal Principles

[11] 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.

[12] 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.

[13] 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).

[14] 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.

[15] I will now apply the above principles to the matter before me.

Analysis

Has Mr. Gallant demonstrated he lacks sufficient means to obtain counsel?

[16] Mr. Gallant bears the burden of demonstrating he does not have the means to engage legal counsel for his appeal and that he has exhausted all other means of obtaining legal representation. He has not met that burden.

[17] Mr. Gallant's evidence regarding his financial circumstances was limited. The only documentary evidence he filed with the Court was print-outs of two bank accounts. He testified he was in receipt of Workers' Compensation benefits and Canada Pension Disability; however, no documentation was provided from those sources. Mr. Gallant did not file copies of his recent income tax returns. He provided no documentation of his current expenses.

[18] Mr. Gallant testified he was currently employed, but gave no indication of his level of earnings or the nature of his employment. He testified he had recently incorporated a limited company, but the company had yet to earn any income. It is unclear to me how Mr. Gallant was able to find the resources to fund the incorporation of a company, but yet has no resources to obtain counsel.

[19] Further, I am not satisfied Mr. Gallant demonstrated he has exhausted all other means of obtaining legal representation. More is required than just establishing Legal Aid has denied his application. An applicant for state-funded counsel should explain their efforts to obtain counsel through alternative means. This could include borrowing funds from family and friends, or attempts to find legal counsel who may be willing to provide assistance at a rate the applicant could afford.

[20] Although Mr. Gallant's motion could be dismissed on the basis of his failure to meet the first criteria, I will proceed to assess whether it is in the interests of justice to provide him with state-funded counsel.

Has Mr. Gallant demonstrated it is in the interests of justice that he be provided counsel for his appeal?

[21] In my view, Mr. Gallant has not established it is in the interests of justice that he be provided with legal counsel for his appeal. In reaching this conclusion, I have considered the following factors.

Merits of the appeal

[22] In assessing the interests of justice component, I will examine the merits of the appeal. Mr. Gallant must demonstrate his appeal raises at least one arguable issue. In *R. v. McPherson*, 2019 NSCA 70, Justice Beveridge noted:

[13] An arguable issue is one that appears to be of enough substance to be capable of convincing a panel of the Court to allow the appeal. A cautious approach to that assessment may be appropriate because it may be hampered by a lack of the complete record, and the fact that the applicant may be self-represented in the s. 684 proceedings and hence at a disadvantage to knowledgeably examine the trial proceedings to identify potential error.

[23] However, Mr. Gallant must also clear another preliminary hurdle. Due to appealing a decision of a Summary Conviction Appeal judge, he will be required to convince a panel of this Court that he should be given leave to appeal Justice

Hunt's decision. The principles relating to the granting of leave in such circumstances were recently addressed by Justice Gogan in *R. v. Robb*, 2024 NSCA 69:

[7] This is an appeal brought under s. 839 of the *Criminal Code of Canada*. An appeal from a decision of the SCAC is restricted to questions of law and requires leave be granted. Only if leave is granted will the merits be considered. The focus of this decision is on the question of leave.

[8] The jurisdiction of this Court is limited. Leave is granted sparingly. There must be a clear error, or an issue that has significance beyond the specific case (*R. v. R.E.M.*, 2011 NSCA 8, citing *R. v. R.R.*, 2008 ONCA 497 and *R. v. MacNeil*, 2009 NSCA 46). The rationale for limiting these appeals is the recognition that there has already been an appeal in the proceeding. A further appeal is only allowed if the issues raised have clear merit or transcendence (*R. v. Ankur*; *R. v. Chandran*, 2023 NSCA 55 at para. 7).

[9] The principles that guide the analysis of leave were discussed in *R. v. Pottie*, 2013 NSCA 68. Justice Farrar, writing for the Court, distilled the approach into a series of inquiries at para. 22:

[22] To decide whether the appellant should be granted leave to appeal, I agree with the Crown's submission that the following questions must be answered:

- a. Does this case raise an issue that is significant to the administration of justice?
- b. Are the merits of the appellant's case strong; is there a "clear" error of law?
- c. Does the appellant face a significant deprivation of his liberty if he is not granted leave to appeal?

[24] In his submissions on this motion, Mr. Gallant did not place much emphasis on the merits of his appeal. I have, however, carefully reviewed the materials I have available which includes his Notice of Appeal, the transcript of the appeal before Justice Hunt, and his reasons. Based on my examination of these materials, I am of the view that it is unlikely a panel of this Court will grant Mr. Gallant leave to appeal. In reaching this conclusion, I note:

- Mr. Gallant's Notice of Appeal and submissions have not identified a clear "error of law" on the part of the Justice Hunt. Mr. Gallant has focused upon Justice Hunt's alleged failure to recognize that he was not aware of his license suspension because he was, due to the results of a hurricane, living away from home, and thus not receiving his

mail. In his reasons, Justice Hunt was clearly aware of these circumstances, but concluded they were not legally relevant based on the nature of the charge and the authorities he cited;

- It is unlikely to be found Mr. Gallant's appeal gives rise to a matter that is significant to the administration of justice in a broader sense; and
- As Mr. Gallant is challenging a fine not a term of incarceration, his liberty interests are not at stake.

[25] In short, I am not satisfied Mr. Gallant has shown he is likely to be granted leave to appeal or an arguable issue.

Complexity of the appeal and Mr. Gallant's capabilities

[26] I will address these two factors together as they are, in this instance, inter-related.

[27] The focus of Mr. Gallant's request for state-funded counsel was his assertion he lives with a disability relating to phonological processing deficits and needs a lawyer to place him on an equal playing field with the Crown, who will most certainly be represented. In support of his argument, Mr. Gallant submitted an unsigned copy of a Psychoeducational Assessment Report dated October 3, 2014. Based on a review of the report, its purpose was to provide recommendations to access accommodations in educational settings given his noted deficits in phonological processing. It concluded Mr. Gallant demonstrated an average cognitive ability.

[28] Should Mr. Gallant be granted leave to appeal, his appeal will not be complex. Nor am I satisfied that he has demonstrated he would be unable to present his appeal on his own. In reaching this conclusion, I note:

- The report he relies on is over a decade old, and does not specifically address why Mr. Gallant would be impaired or prevented from presenting his own appeal;
- Mr. Gallant's evidence demonstrates that, despite his noted disability, he has been able to participate in a Business Administration program and confirmed that he needs no accommodations to do so;

- He was able to argue the motion before me, and was able to respond to questions from the Court. He never indicated, nor did I detect, that he had any difficulty in understanding the process or what was being said;
- Mr. Gallant did not specify how his particular limitations would impair his ability to represent himself on appeal; and
- A review of the transcript below demonstrates Mr. Gallant was able to engage with the court, and clearly explained the basis on which he had advanced that appeal. Indeed, he made and was successful in a fresh evidence motion before Justice Hunt.

The Court's role/Duty of the Crown

[29] Both the Court and the Crown have a duty to ensure Mr. Gallant will be treated fairly in the presentation of his appeal. This would include communicating in a manner that ensures Mr. Gallant understands what is being said at the hearing.

[30] Although Mr. Gallant's appeal may be better presented if he has legal counsel, that is not the yardstick this Court applies to whether it is in the interests of justice to grant the motion. Based on the explanation above, I am of the view Mr. Gallant has not demonstrated it is in the interests of justice for him to be provided with state-funded counsel.

Conclusion

[31] For the above reasons, I dismiss the motion.

Bourgeois, J.A.