

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *R. v. Cox*, 2013 NSCA 140**

**Date:** 20131129

**Docket:** CAC 419071

**Registry:** Halifax

**Between:**

Trudy Charmaine Cox

Appellant

v.

Her Majesty the Queen

Respondent

**Judge:** The Honourable Justice Duncan R. Beveridge

**Motion Heard:** November 21, 2013, in Halifax, Nova Scotia, in Chambers

**Held:** Motion dismissed.

**Counsel:** Trudy Cox, appellant in person  
Marian Fortune-Stone, Q.C., for the respondent  
Lawrence R. Finck, proposed agent

**Decision:**

[1] Ms. Cox was convicted of assault causing bodily harm and sentenced on July 26, 2013, to 28 months' incarceration, consecutive to any other sentence being served.

[2] She has appealed from conviction and sentence. Her stated grounds of appeal refer to: a fresh evidence application; she was not criminally responsible; and that her legal counsel was incompetent. Her appeal is not yet perfected. The Crown is in the process of preparing the appeal book.

[3] Ms. Cox, with the apparent assistance of Lawrence R. Finck, filed a Notice of Motion accompanied by an affidavit and a document entitled "Agency Agreement" between her and Mr. Finck. The Notice was unsigned and the affidavit not sworn.

[4] The motion requests appointment of a "legal advocate pursuant to s. 684 of the *Criminal Code*". The unsworn affidavit refers to Ms. Cox having entered into a contract with Lawrence Finck to have him conduct her appeal, and that she has no intention of applying for legal aid. The agency agreement refers to Ms. Cox appointing Mr. Finck to act on her behalf as her "legal and investigative advocate", authorizing him to act and speak on her behalf.

[5] Arrangements were made for Ms. Cox to appear in Chambers on November 21, 2013, with the Crown and Mr. Finck in attendance. At the conclusion of the hearing I advised Ms. Cox that even if I had the jurisdiction to permit Mr. Finck to act as her agent before the Nova Scotia Court of Appeal, I would not do so. These are my reasons.

**LEGAL FRAMEWORK**

[6] The *Criminal Code* is silent on what role, if any, agents may play in indictable matters. Agents are permitted to have a role in summary proceedings. Section 800(2) of the *Criminal Code* provides that "a defendant may appear personally or by counsel or by agent." This permissive section only applies to summary conviction proceedings under Part XXVII of the *Code*.

[7] However, there are restrictions. Section 800(2) provides that the summary conviction court may require a defendant to appear personally. Further, s. 802.1

precludes an agent from appearing for a defendant to examine or cross-examine witnesses if, on summary conviction, he or she is liable to be imprisoned for more than six months.

[8] Section 684 of the *Code* bestows a broad discretion on a court of appeal or a judge of that court to 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”. Counsel is defined in s. 2 of the *Code* to mean “a barrister or solicitor” authorized to practice law. Mr. Finck is not, nor has ever been, a barrister or solicitor.

[9] In *R. v. Romanowicz* (1999), 45 O.R. (3d) 506, the Ontario Court of Appeal confirmed that even in summary proceedings, the court has the power to allow or exclude a layperson from representing a party as falling within the court’s jurisdiction to control its own process. The court wrote:

[58] The *Criminal Code* does not expressly authorize the court to disqualify agents in summary conviction proceedings. Nonetheless, we are satisfied that the power to do so along the lines found in the provincial legislation exists by virtue of the court's power to control its own process in order to maintain the integrity of that process. The power of the criminal trial court to control its process was described as a fundamental value of the criminal justice system by La Forest J. in *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 at p. 502, 110 C.C.C. (3d) 193 at p. 208. In describing the power, he said:

The first such value is the power vested in courts of criminal jurisdiction to control their own process in furtherance of the rule of law. This was recognized in *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901, where McLachlin J. noted that “[t]he rule of law is directly dependant on the ability of the courts to enforce their process and maintain their dignity and respect” (p. 931).

[10] To similar effect, the British Columbia Court of Appeal denied the request of an accused appellant in an indictable appeal the privilege of audience to have a non-lawyer speak on his behalf (*R. v. L’Espinay*, 2008 BCCA 20; see also *R. v. Dick*, 2002 BCCA 27).

[11] There are two Nova Scotia cases that have particular relevance. They involve the same appellant, Walter Gouchie, who also wanted Lawrence Finck to act as his “agent”. The circumstances are these: Mr. Gouchie was convicted of indictable offences. He received a sentence of incarceration. After he filed a

notice of appeal, Mr. Gouchie applied to a single judge of this Court, pursuant to s. 684 of the *Code*, for the appointment of counsel.

[12] Mr. Finck was also incarcerated at the same time. Mr. Gouchie wanted Mr. Finck's help on his s. 684 application. Before the application was heard, the Attorney General applied to disqualify Mr. Finck from acting for Mr. Gouchie. The Honourable Justice L. L. Oland heard that application in Chambers. She permitted Mr. Finck to make submissions on behalf of Mr. Gouchie on that application.

[13] Mr. Finck argued that a judge sitting in Chambers did not have the jurisdiction to prohibit him from acting as Mr. Gouchie's agent on the s. 684 application. The Attorney General urged the Chambers judge that she did have the jurisdiction to make that determination.

[14] Oland, J.A., after canvassing the *Nova Scotia Civil Procedure Rules* (1972), then in force, did not find that the *Rules* expressly, or by clear implication, empowered a Chambers judge to decide whether a person could act as agent for an appellant, either on an application or on an appeal. However, in light of the complexity of the legal issues presented, Justice Oland referred the application to a panel of the Court and adjourned the hearing of Mr. Gouchie's s. 684 application pending the outcome of those proceedings. Her reasons are reported (2005 NSCA 143).

[15] The Attorney General's application to preclude Mr. Finck from acting as Mr. Gouchie's agent on the s. 684 application was eventually heard by a panel of this Court. Bateman, J.A. delivered the unanimous reasons for judgment (2006 NSCA 109). With respect to the issue as to whether a judge sitting in Chambers has the jurisdiction to allow or exclude a layperson from representing a party before the Court, she wrote:

[10] The first issue raised is not engaged here because the application is now before a panel of the Court. However, a judge of this Court, sitting in Chambers, clearly has the jurisdiction to grant or deny audience to a lay person appearing before that judge on behalf of another. This is consistent with **Civil Procedure Rule** 62.31(1) which provides that a judge has all necessary power and authority to deal with any application authorized to be made to the judge. In the context of this case, s. 684 of the **Criminal Code** expressly contemplates that such an application be made to either the court or a judge.

[16] At the hearing of the application, the Court again permitted Mr. Finck to speak on Mr. Gouchie's behalf.

[17] Bateman, J.A., referred to *R. v. Romanowicz* and *R. v. Dick* with approval. However, she concluded that it was unnecessary for the Court to decide whether an agent may represent an accused in an indictable matter; and assuming, without deciding, that Mr. Gouchie might be represented by an agent on his s. 684 application, found that Mr. Finck was not qualified to do so. I will detail later her reasons for that finding.

[18] Ms. Cox made it clear she did not ask me to permit Mr. Finck to act as her agent, or otherwise speak on her behalf in furtherance of an application under s. 684 of the *Criminal Code* for the appointment of counsel. She asked that I grant permission or leave for Mr. Finck to act as her "agent" on her appeal. While I have not had the benefit of specific submissions on this issue, I am prepared to assume that I have the necessary jurisdiction to grant or deny the requested permission. I do so for the following reasons.

[19] The issue is one of procedure with respect to the conduct of the appeal, not ruling on a substantive right. Procedural matters are, at least before a panel is struck, properly dealt with in Chambers by a single judge. Speed and efficiency are promoted by such a division of labour. That is not to say that procedural matters are not important. Routinely they go much beyond merely setting filing dates.

[20] New Civil Procedure Rules came into force January 1, 2009. *Rule 91* of the *Nova Scotia Civil Procedure Rules* provide procedural guidance on criminal appeals. There is nothing in *Rule 91* which gives a Chambers judge, or a panel of the Court, the authority to permit audience, assistance, or representation of an appellant or respondent by an agent. It is silent.

[21] *Rule 91.02(2)* provides that the *Civil Procedure Rules* as a whole, and in particular *Rule 90*, apply to this Rule with any necessary modifications and when not inconsistent with *Rule 91*. There are no provisions in *Rule 90* that address a prospective role for an agent on an appeal.

[22] However, *Rule 34* "ACTING ON ONE'S OWN" does give a judge procedural guidance on permitting a non-lawyer to assist a party. The following provisions are relevant:

**Assistant**

- 34.08 (1) A judge may permit a person to assist, and if necessary speak on behalf of, an individual party at a trial or hearing.
- (2) A party on behalf of whom an assistant is permitted to speak must be present when the assistant speaks, unless a judge allows otherwise.

**Restrictions on agent or assistant**

- 34.09 (1) A person may not speak for a party at a trial or hearing unless the person is within subsection 16(2) of the *Legal Profession Act*, is the appointed agent of a corporate party, or has the permission of a judge to speak on behalf of a party.
- (2) A judge may require a corporate party to replace its appointed agent.
- (3) The presiding judge may withdraw permission for a person to assist, or speak for, an individual party.

[23] “Hearing” is not defined in the Rules. In my opinion, *Rule 34* is not inconsistent with any provision of *Rule 90* or *91* and therefore can be relied upon as authority for a judge in Chambers to permit, or prohibit a person to make representations on behalf of an appellant or respondent. Of course, that permission or prohibition by a single judge is not a final or binding ruling on the panel who may end up hearing an appeal or other proceeding related to an appeal.

**THE HEARING**

[24] After clarifying with Ms. Cox that her motion was to have Mr. Finck act as her agent on the appeal – and according to the documents she filed, really as role of a lawyer – I provided her with copies of decisions by Oland, J.A. in *R. v. Gouchie*, 2005 NSCA 143 and by this Court in *R. v. Gouchie*, 2006 NSCA 109. I did so for two purposes.

[25] First of all, so that she was aware of the live issue as to my jurisdiction to grant the relief she was seeking. Secondly, for her to be aware of the findings by this Court in the judgment written by Justice Bateman where she adopted, as compelling, the submissions of the Attorney General that Mr. Finck did not just have a criminal record, but had demonstrated a lack of honesty and integrity; ignored court orders and admitted to lying in court (para. 24).

[26] Justice Bateman then set out a lengthy recitation of some 30 reported decisions involving Mr. Finck that demonstrated not just his criminal record, but admitted perjury, contemptuous behaviour and penchant for advancing spurious and irrelevant arguments. She referred to Mr. Finck's representations before the panel as rambling and largely irrelevant, and that Mr. Finck would be entirely ineffective as Mr. Gouchie's agent (para. 26).

[27] All of this, caused Bateman, J.A, to conclude:

[27] To use the words of the Court in **Romanowicz, supra**, (at para. 80) Mr. Gouchie's choice of Mr. Finck as his agent is "is clearly incompatible with the proper administration of justice".

[28] Copies of these decisions were also provided to Mr. Finck. I granted Mr. Finck permission to address the Court on the issue of whether or not I had jurisdiction and, assuming I did, why permission ought to be granted.

[29] Mr. Finck then addressed the Court for approximately 35 minutes. He denied ever being in court in front of Justice Oland, despite Justice Oland's reference at paragraph 6 of her decision to Mr. Finck making representations before her. He made the same claim in relation to never having appeared in front of Justice Bateman on September 26, 2006, contrary to the reference at paragraph 13 of her reasons for judgment that the Court permitted Mr. Finck to speak on Mr. Gouchie's behalf. His response when these passages were pointed out to him varied from having no recall to one of it being "all lies/mistruths".

[30] Mr. Finck instead insisted that a 3-judge panel of this Court had indeed granted him permission to act as agent. He had nothing that could substantiate such a claim, which is directly contradicted by the decision of this Court penned by Justice Bateman.

[31] What then followed over the next half hour could only be described as a rambling description of a variety of lawsuits or litigation that Mr. Finck says he has been involved in in British Columbia, Ontario and Nova Scotia. Included were allegations of conspiracy by the U.S. and Canadian governments with respect to trafficking in cocaine, and denying addicts access to medications that can easily cure addiction to that drug.

[32] Suffice it to say, there was nothing he said that in any way dispelled the findings and observations made by a full panel of this Court about the

inappropriateness of permitting Mr. Finck to act as an agent. To the contrary, everything he said made it crystal clear that his proposed assistance to Ms. Cox would be entirely inappropriate.

[33] Accordingly, I dismissed the motion.

Beveridge, J.A.