NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Stewart*, 2014 NSCA 56

Date: 20140603
Docket: CAC 419615
Registry: Halifax

Between:

Dennis Garry Stewart

Appellant

v.

Her Majesty the Queen

Respondent

Judge:	The Honourable Justice Peter M. S. Bryson
Motion Heard:	May 29, 2014, in Halifax, Nova Scotia in Chambers
Held:	Motion dismissed.
Counsel:	Appellant, in person James Gumpert, Q.C, for the respondent, Watching brief only Paul Adams (for Scott Miller), for the Federal Crown Edward A. Gores, Q.C., for the Attorney General of Nova Scotia

Decision:

[1] Mr. Stewart wants counsel for his appeal. He has turned down the assistance offered by Nova Scotia Legal Aid. He brings a motion under s. 684 of the *Criminal Code of Canada* to have the Court appoint counsel for his appeal.

[2] Mr. Stewart pleaded guilty to a series of summary and indictable offences involving what the sentencing judge described as "predatory sexual activity against children", (2013 NSPC 64). He also pleaded guilty to related indictable offences for breaches of undertaking and trafficking in a controlled substance.

[3] Taking into account remand time, the sentencing judge sentenced Mr. Stewart to five years' imprisonment on a "go-forward basis".

[4] Mr. Stewart now appeals both conviction and sentence. His grounds of appeal are elaborated upon below.

Background to s. 684 Motion

[5] Originally, Nova Scotia Legal Aid had agreed to represent Mr. Stewart, provided that his appeal was confined to sentence only and that he not pursue his conviction appeal. Initially, that appears to have been acceptable to him and Mr. Roger Burrill of Nova Scotia Legal Aid filed an amended Notice of Appeal on his behalf in which he alleged that "the sentencing judge erred in law by failing to properly attribute pre-sentence detention credit to the total disposition".

[6] By Order dated February 5, 2014, the Honourable Justice David P. S. Farrar authorized the filing of an amended Notice of Appeal alleging an error by the sentencing judge with respect to pre-sentence detention. But shortly thereafter, Mr. Stewart wrote to the Court indicating that he wanted a "state appointed lawyer" and that he wished to pursue appeal of both conviction and sentence.

[7] By document dated Friday, February 21, 2014, and headed "Affidavit Statement", Mr. Stewart purported to reinstate his conviction appeal. He says "the appellant appeals from the conviction and sentence of appeal no. 419615 due to the following information: The appellant, Dennis Garry Stewart, age 71, D.O.B. December 21, 1941, was never at any time during all Court proceedings read any verbal (alphabetical) charges from any official "Informations" as required by the

Criminal Code of Canada. In lieu of reading verbal charges, the appellant was convicted and sentenced under numeric sections of the CCC".

[8] On March 6, 2014, Justice Farrar signed an Order authorizing Mr. Burrill's withdrawal as solicitor of record for Mr. Stewart.

[9] Mr. Stewart has been sent materials on how to apply for counsel under s. 684 on a number of occasions. At a telephone conference with counsel and the Court on April 2, 2014, Mr. Stewart was told that what he had filed with the Court was not in compliance with what the Court requires for a s. 684 motion. The Crown and the Court explained to Mr. Stewart what he was expected to file in support of his motion. On April 3, the Registrar sent a further package of materials to Mr. Stewart explaining what needed to be filed in support of a motion for state-funded counsel. To précis the Registrar's covering letter, Mr. Stewart was told to include in his sworn affidavit the following:

1. the reasons for his motion and, in particular in this case, details of any errors he claims his lawyers made, and reasons why he feels his appeal should succeed. The Registrar's letter explained the risk to him of the waiver of solicitor-client privilege associated with such allegations;
2. details and documents regarding why he is unable to afford a lawyer and what, if any, efforts he has made to hire a private lawyer;
3. details of his efforts to obtain publicly funded legal aid;
4. financial details of property he owns or income he has which would show why he could not afford a lawyer;
5. information regarding why Mr. Stewart does not feel he can conduct the appeal on his own behalf, including a description of his education, employment, training, communication skills and the like;
6. an explanation of why he feels that the appeal is so complex that it requires a lawyer to argue it on his behalf.

[10] On April 15, 2014, the Registrar received a letter with a Notice of Motion and "affidavit" signed by Mr. Stewart but not sworn, explaining that he had exhausted all avenues with Nova Scotia Legal Aid and that he lacked funds to assist him in obtaining a lawyer. Attached to the unsworn affidavit is a further document called "Affidavit Statement CAC 419615" dated April 8, 2014, in which

he elaborates on his circumstances and grounds of appeal which will be discussed further in these reasons.

[11] At a subsequent telephone conference on April 30, 2014, the Crown continued to express concern about deficiencies in Mr. Stewart's motion materials and unsworn affidavit, but Mr. Stewart interrupted him in an agitated manner and said "no more delays". The Court permitted Crown counsel to finish explaining what he felt the shortcomings were in Mr. Stewart's materials. Mr. Stewart was then asked, in light of the Crown's concerns, whether he wished to file any further materials. He said no. Accordingly, the Court set the motion date of May 29 to hear Mr. Stewart's motion.

Section 684 Motion - Law

[12] Section 684 of the *Criminal Code* provides that the Court may appoint counsel for an accused:

> **Legal assistance for appellant**
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> 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] Recently, in *R. v. Fudge*, 2013 NSCA 149, Justice Beveridge elaborated on what is meant by this section:

> [8] The words in the first part of the articulated test, whether "it appears desirable in the interests of justice" do not really offer concrete guidance. As observed by Doherty J.A. in *R. v. Bernardo*, [1997] O.J. No. 5091, 121 C.C.C. (3d) 123, writing for the Court:
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> > [16] The phrase "the interests of justice" is used throughout the *Criminal Code*. It takes its meaning from the context in which it is used and signals the existence of a judicial discretion to be exercised on a case-by-case basis. The interests of justice encompass broad based societal concerns and the more specific interests of a particular accused.
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> [9] The factors that are usually considered in applying this test were succinctly summarized by Cromwell J.A., as he then was, in *R. v. Assoun*, 2002 NSCA 50:

> [42] The first inquiry, therefore, is whether it appears to be in the interests of the administration of justice that Mr. Assoun have legal assistance for the purpose of preparing and presenting his appeal. **This involves consideration of numerous factors including the merit of the appeal, its complexity, the ability of the appellant to effectively present his or her appeal without the assistance of a lawyer and the capacity of the court to properly decide the appeal without the assistance of counsel.** [emphasis added]

[14] Justice Farrar has also recently commented on the elements of a s. 684 motion in *R. v. Sykes*, 2014 NSCA 4:

> [12] I am satisfied from the information Mr. Sykes has provided to the court that he lacks the means to otherwise retain counsel. Therefore, I am only left to complete the "interests of justice analysis". Cromwell, J.A. (as he then was) noted in **R. v. Assoun**, 2002 NSCA 50, this inquiry involves a number of considerations including:
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> i. the merits of the appeal;
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> ii. its complexity;
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> iii. the appellant's capability; and
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> iv. the Court's role to assist.
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> [13] Chief Justice MacDonald in **R. v. Morton**, 2010 NSCA 103 added an additional consideration, that is, the responsibility of Crown counsel to ensure that the applicant is treated fairly (¶5).
>
> [14] Is it in the interest of the administration of justice that the appellant have legal assistance for the purpose of preparing and presenting his appeal?

[15] Given the variety of materials filed by Mr. Stewart or on his behalf in connection with this appeal, I will try to summarize the grounds of appeal that are alleged based on these materials and from what I understand from Mr. Stewart's submissions to the Court. Those grounds are:

1. The charges to which Mr. Stewart pled guilty were not read out in Court, contrary to the requirements of the *Criminal Code*.
2. Mr. Stewart did not understand what he was pleading guilty to.
3. At the time he pleaded guilty, Mr. Stewart was under the influence of "mind-altering drugs", including Paxil and Clonazepam. He asserts he was "hallucinating before his August 2013 appearance in court".

4. Mr. Stewart said he was not properly represented by either of his first two Legal Aid defence counsel. Mr. Stewart claims that his first lawyer had reached a joint recommendation on sentence with the Crown, which was lower than the one he received by the sentencing judge.

5. His second Legal Aid lawyer committed a "breach of trust" by "conspiring" with the Federal and Provincial Crown Attorneys "to have me plead guilty to numeric sections of the *Criminal Code* while under mind-altering medications and without his verbal permission".

6. Although he served 19 months in remand, Mr. Stewart was only credited for 12 months by the sentencing judge.

Merits of the Appeal

[16] This is the first consideration that the Court must address in an application under s. 684. In the case of a challenge to a guilty plea, there is a heavy onus on the appellant to show that the plea was invalid. There is a strong presumption against the appellant, particularly where the accused was represented by able counsel. In *R. v. Nevin*, 2006 NSCA 72, this Court commented as follows:

> [7] When the validity of a guilty plea is raised for the first time on appeal the accused has the onus of showing it was invalid. Doherty, J.A. in **R. v. R.T.**, (1992), 10 O.R. (3d) 514; O.J. No. 1914 (Q.L.) (Ont. C.A.) said at p. 519:
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> > Where the validity of a guilty plea is raised for the first time on appeal, the appellant has the onus of showing that the plea was invalid. The appellate court will examine the trial record and any additional material proffered by the parties which, in the interests of justice, should be considered in assessing the validity of the plea. In this case, both parties had submitted material which, in my view, should be received and considered in assessing the validity of the pleas.
> >
> > A guilty plea is a formal admission of guilt. It also constitutes a waiver of both the accused's right to require the Crown to prove its case beyond a reasonable doubt and the related procedural safeguards, some of which are constitutionally protected: *Korponay v. Canada (Attorney General)*, [1982] 1 S.C.R. 41 at p. 49, 65 C.C.C. (2d) 65 at p. 74; *Brady v. United States*, 397 U.S. 742 (1970), at p. 748, *Fitzgerald, The Guilty Plea and Summary Justice* (1990) at pp. 192-203.
> >
> > To constitute a valid guilty plea, the plea must be voluntary and unequivocal. The plea must also be informed, that is the accused must be aware of the nature of the allegations made against him, the effect of his

> plea, and the consequence of his plea: *R. v. Lyons*, [1987] 2 S.C.R. 309 at p. 371, 37 C.C.C. (3d) 1 at p. 52; *Law Reform Commission of Canada* Working Paper No. 63, "Double Jeopardy Pleas and Verdicts" (1991) at p. 30. (Emphasis added)

[8] Doherty, J.A. described a "voluntary" plea as follows at p. 520:

> I will first address the voluntariness of the appellant's guilty pleas. A voluntary plea refers to the conscious volitional decision of the accused to plead guilty for reasons which he or she regards as appropriate: *R. v. Rosen*, [1980] 1 S.C.R. 961 at p. 974, 51 C.C.C. (2d) 65 at p. 75. A guilty plea entered in open court will be presumed to be voluntary unless the contrary is shown: Fitzgerald, *The Guilty Plea and Summary Justice*, supra, at p. 71.
>
> Several factors may affect the voluntariness of a guilty plea. None are present in this case. The appellant was not pressured in any way to enter guilty pleas. Quite the contrary, he was urged by duty counsel not to plead but to accept an adjournment. No person in authority coerced or oppressed the appellant. He was not offered a "plea bargain" or any other inducement. He was not under the effect of any drug. There is no evidence of any mental disorder which could have impaired his decision-making processes. He is not a person of limited intelligence.
>
> In his affidavit the appellant asserts that he was anxious and felt himself under pressure when he entered his pleas. No doubt most accused faced with serious charges and the prospect of a substantial jail term have those same feelings. Absent credible and competent testimony that those emotions reached a level where they impaired the appellant's ability to make a conscious volitional choice, the mere presence of these emotions does not render the pleas involuntary. (Emphasis added)

[17] Owing to Mr. Stewart's allegations in his grounds of appeal, the "merits" test requires the recitation of some of the history of the proceedings.

[18] On September 24, 2012, Mr. Stewart appeared before the Honourable Provincial Court Judge Richard MacKinnon. He was then without counsel having fired his first lawyer. He was considering changing his election and plea. He confirmed this before the Honourable Provincial Court Judge Del Atwood on October 4, 2012. No mention was made at either appearance of any "sentencing deal" between the Crown and Mr. Stewart's first lawyer.

[19] On March 11, 2013, Mr. Stewart appeared before Provincial Court Judge Robert Stroud, together with his then counsel, Robert Sutherland. At that time, Mr. Stewart entered guilty pleas to a series of charges and a pre-sentence report was requested. Several counts in a number of Informations were amended. With

respect to the guilty pleas, Mr. Sutherland confirmed in open court with Mr. Stewart that the pleas were "…knowing, volitional, unequivocal and in compliance with section 606(1.1) of the *Criminal Code*". His counsel asked him if that was correct and Mr. Stewart answered on the record "yes". A forensic sexual behaviour pre-sentence assessment was also requested by the Crown.

[20] On May 2, 2013, before Judge Atwood, the Crown extensively reviewed the facts relating to the offences. After the Crown's summary, Mr. Stewart's counsel was asked to comment and made a brief correction with respect to one item on the record and confirmed it with Mr. Stewart who replied "yes". Mr. Stewart's counsel then re-elected with respect to some counts and entered guilty pleas for Mr. Stewart. Again, he confirmed on the record that the guilty pleas were "knowing, volitional, unequivocal and in compliance with section 606". To his counsel's query, he responded: "yes sir". So Mr. Stewart confirmed his re-elections and his entering of guilty pleas on the record with Judge Atwood.

[21] In the pre-sentence report of April 25, 2013, reference was made to Mr. Stewart's understanding of the charges against him:

> Dennis Garry Stewart was interviewed via telephone, as he was remanded to the Central Nova Scotia Correctional Facility. He answered all questions and was polite with this writer. When questioned regarding the offences, the offender stated that he wanted this writer to know that he was appealing his guilty finding. This writer questioned this as he had entered a guilty plea to all charges. ***Same advised that he had "no idea" as to what he pled guilty to stating that the charges were referred to "by section number not charge name" and offered that "I am so confused…not sure what is going on…I am only 60% guilty and 40% innocent. My lawyer explained nothing to me." When questioned further regarding this statement, the offender offered no further comments***.
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> [Emphasis added]

[22] As a result, Mr. Stewart's knowledge of the charges and his pleas were specifically addressed by his counsel, Mr. Sutherland, during sentencing submissions on July 31, 2013:

> **MR. SUTHERLAND**: Yes. Thank you, Your Honour. By way of introduction I'd like to address two matters. Firstly, in the presentence report dated May 2nd, 2013, on page 5, and indeed on page 6, that would be paragraph 1 on page 5 and paragraph 3 on page 6, the defendant makes certain comments that I want to clarify. I discussed those comments with him. They relate to the suggestion that he had no idea he was pleading guilty. He was confused, not sure

> what was going on, only 60 percent guilty, 40 percent innocent, and on the second page he was not guilty, had no need to attend an assessment.
>
> I've discussed the matters with him, and he indicates what he wished to indicate at the time was that - - was a non-legal sense of guilt, that what he wished to communicate was that there was no significant physical violence involved. And I explained to him the distinctions, and I had on earlier occasions, and I reminded him that, while this report was prepared on May the 2nd of this year, earlier that date we had been in court, the facts were read in, they were agreed to him by him. I indicated at the time, and I repeat now, they were pursuant to written instructions, detailed written instructions.
>
> The writer of the probation report does note that this person has a certain degree of vacillation between confusion and clarity. ***He had a certain degree of confusion at the time of this report. That's been dispelled. He wishes me to continue as his lawyer. I was aware of this on an earlier occasion. We resolved matters and we have no problems in terms of the solicitor/client relationship. Is that correct, sir? You wish me to***…
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> **MR. STEWART**: ***Yes, Sir***.
>
> [Emphasis added]

[23] Submissions on sentence were made before Judge Atwood on July 31, 2013. Those submissions commented on the facts underlying the charges against Mr. Stewart. At the conclusion of submissions, the Court asked Mr. Stewart's lawyer "so I take it that the factual recitations in the forensic sexual behaviour [pre-sentence] assessment, the biography of Mr. Stewart, so to speak, as he disclosed to the assessors is admitted?" Mr. Stewart's counsel said that he would have him "confirm on the record that, what he told the doctors and what is reported in the report as his prior history is true. Is that correct sir?", to which Mr. Stewart replied "most certainly is". The Court then asked Mr. Stewart if there was anything he would like to say before the Court imposed sentence. Mr. Stewart then made a brief submission about incarceration related to breach of an undertaking. But he said nothing more than that.

[24] Judge Atwood reserved his sentencing decision which was delivered on August 9, 2013.

[25] There is nothing in this record that suggests that Mr. Stewart did not understand the charges against him or that he pleaded guilty involuntarily or without understanding what he was doing. It is clear that there were a number of court appearances before Mr. Stewart was sentenced. He was not rushed. He had ample opportunity to consider his options. Nor is there any suggestion of any

wrongdoing or misconduct by Mr. Sutherland or Mr. Stewart's previous legal counsel. No evidence of ineffective counsel appears on the record or in evidence from Mr. Stewart.

[26] There is no suggestion of any "sentencing" deal that was made or not honoured. Mr. Stewart was present throughout. Mr. Sutherland had written instructions from him.

[27] Mr. Stewart's first five "grounds of appeal" are without merit and raise no arguable issue. His final ground – that he did not receive proper credit for his remand time, is a matter of discretion for the sentencing judge and is difficult to disturb unless the judge acted on a wrong principle. Judge Atwood said:

> • case number 2407391, an indictable offence of computer luring under para. 172.1(1)(b); . . . three-years' imprisonment, reflecting totality, less one year credit for time served; full credit for time served is not appropriate in my view, as, applying the principles set out in *R. v. LeBlanc* [2011 NSCA 60] it is important to note that Mr. Stewart had been admitted to bail, but wound up being bail denied and bail revoked because of his ongoing and serious criminal conduct in January 2012; …

[28] In *LeBlanc*, this Court commented on credit for pre-trial custody:

> [22] Various factors may justify the principled exercise of the sentencing judge's discretion to abridge or even deny credit for remand time, including evidence that earlier release would not promote rehabilitation, failure to seek bail, remand because the accused failed to appear as required, the offender's conduct while on bail such as breach of conditions of release, a significant or violence based criminal record, or that the offender would pose a danger to society. *R. v. A.N.*, para. 40; *R. v. Ali*, 2009 ABCA 120, paras 4 and 19; *R. v. Tschritter*, 2006 BCCA 202, paras 3-5, 15; R. *v. Gallant*, 2004 NSCA 7, paras 20-22; *R. v. Vermette*, 2001 MBCA 64, para. 66; *R. v. Gillis*, 2009 ONCA 312, para. 11; *R. v. Coxworthy*, 2007 ABCA 323, at paras 9, 16.

[29] Criminal conduct while on bail is a factor that a sentencing judge may properly consider when according credit for remand time. The sentencing judge committed no apparent error in taking this into account. Nor can it be said that a five-year sentence on a "go-forward" basis was inappropriate, given the circumstances of the offences and offender here. No apparent arguable issue is raised with respect to sentence. Even if there were, Mr. Stewart rejected Legal Aid's assistance with respect to this ground of appeal.

Complexity

[30] With the possible exception of the last ground of appeal, none of the grounds are complex. They all essentially involve factual allegations made by Mr. Stewart with which he should be personally familiar. Any legal complexity associated with the sentence appeal can be mitigated by the Crown's fair presentation of the law of which the Court and the accused habitually have the benefit. Similarly, the Court has an obligation to see that the accused is treated fairly (per Chief Justice MacDonald in *Morton*, referred to in paragraph 14 above).

The appellant's ability to represent himself

[31] Mr. Stewart has a grade 12 education. He was employed for six years with the Halifax Police Department and later with the Canadian National Railways Police. He also worked in the metal salvaging business. He is articulate in his own cause and presents his position clearly and forcefully.

[32] In his oral submissions, Mr. Stewart repeated his written allegations of confusion. But his submissions were logically and factually appropriate. He displayed a very good grasp of detail, providing the Court with bank account and insurance policy numbers from memory.

[33] The forensic sexual behaviour pre-sentence assessment took place on July 7 and 8, 2013 – the same month of Mr. Stewart's sentencing hearing. In that assessment, the author notes: "At assessment, however, he denied any hallucinations…". The pre-sentence report of April 25, 2013 observed: "It appeared to this writer that the subject vacillated between confusion and clarity at his convenience."

[34] Mr. Stewart is perfectly capable of arguing his largely fact-driven grounds of appeal. The Crown's submissions on sentence will give him a fair account of applicable legal principles. The Court will ensure the merits of the appeal are carefully considered. As Justice Hallett said in *R. v. Grenkow* (1994), 127 NSR (2d) 355:

> [27] Third, the reality is that on an appeal from conviction or sentence where the appellant appears in person, the appeal panel hearing the appeal will carefully address the issues raised by the appellant. The panel will have the trial record and the panel members will have reviewed the record of the proceedings. If the points raised on the appeal have merit the appeal will be allowed notwithstanding the possible imperfect presentation of argument by the appellant. There is a problem,

> of course, in that the appellant may not recognize that he or she has a meritorious point and there is no requirement that a court of appeal dig around in a transcript to discover errors. However, in most appeals where an appellant appears in person, and for the most part those are sentence appeals, any errors will come to the attention of the appeal court. A review of the results of appeals from conviction show that in the past 18 months two appellants representing themselves have been successful.

Mr. Stewart's Resources

[35] Mr. Stewart initially was receiving an income of $17,000 a year at least since his remand in 2011. He no longer receives Old Age Pension payments as a result of his conviction and incarceration (*Eliminating Entitlements for Prisoners Act*, S.C. 2010, c. 22). He lists no debts. He has no expenses. Until the oral hearing, he provided the Court with no evidence of bank accounts or other assets.

[36] At the hearing, Mr. Stewart said that in September of 2013, he gave $26,000 to his son to pay his son's debts and put a down payment on a house. Of the $600 plus he receives every month, he gives $600 to his son. This was all new information not contained in his written material.

[37] Coincidentally, Mr. Stewart's Notice of Appeal was filed in September 2013. As part of his oral submissions, Mr. Stewart quoted from the standard police caution, which includes the right to speak to counsel who will be provided to an accused without expense to him, if he cannot afford counsel. Mr. Stewart's previous experience with the courts and his police background, combined with the timing of his gift to his son, suggest that he deliberately impoverished himself to qualify for legal counsel at the public's expense. Certainly, it is clear that he had the resources to retain a lawyer when he started his appeal. Even now, he could afford a $600 per month retainer.

[38] I am not satisfied that Mr. Stewart lacks the resources to hire his own lawyer. Mr. Stewart concluded his submissions by arguing emphatically that he had a constitutional right to counsel at the public's expense. He said without counsel, there would be no appeal, because it would be foolish to proceed without a lawyer. If he really believed that, one wonders why he would deprive himself of the means of retaining a lawyer by giving all his money away. Mr. Stewart has already had three different lawyers at public expense and has discharged at least two of them.

[39] Mr. Stewart's assertion that he has an unqualified right to a publicly funded lawyer is simply not correct. One only need quote Justice Hallett in *Grenkow*, as did counsel for the Attorney General during oral argument:

> [28] In this Province Legal Aid has the primary responsibility to determine if an appellant is to be represented by counsel at the expense of the taxpayer. The court should not be quick to assume this role. I have rejected the position advanced by the Crown that the test for the assignment of counsel under s. 684 is whether an arguable issue has been raised. That is too low a threshold and would lead to innumerable applications for representation on appeals of dubious value. If there truly is an issue that has reasonable merit as opposed to some remotely possible merit Legal Aid will fund the appeal. In short, in the vast majority of cases if an appellant is refused legal aid for an appeal the interests of justice will not require that a convicted person have legal assistance provided pursuant to s. 684. It must be borne in mind that the law in Canada is clear: an accused does not have a constitutional right to a state funded counsel at trial (**R. v. Ewing** (1973), 18 C.C.C. (2d) 356; 29 C.N.R.S. 227; [1974] 5 W.W.R. 232 (B.C.C.A.); **R. v. Rowbotham et al.** (1988), 25 O.A.C. 321; 41 C.C.C. (3d) 1; 63 C.R. (3d) 113; 35 C.R.C. 207 (C.A.), **R. v. Rockwood** (1989), 91 N.S.R. (2d) 305; 233 A.P.R. 305; 49 C.C.C. (3d) 129; 42 C.R.R. 369 (C.A.)). It logically follows that there is no constitutional right to a state-funded counsel on appeal following conviction. If an appeal does not have merit, (that is, a reasonable chance of success) the interests of justice do not require the appointment of counsel pursuant to s. 684 of the **Code**. The principles of fundamental justice do not dictate that every appellant be represented by counsel. In **R. v. Robinson; R. v. Dolejs**, supra, McClung J.A. reviewed the history of appeals in England and in Canada. He concluded:
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> > "...there is no **Charter** protected right of appeal, let alone a **Charter** protected right to appeal at Government cost."

Conclusion

[40] It is not "in the interests of justice" that Mr. Stewart have legal counsel in this case. Nor has Mr. Stewart established that he lacks sufficient means to obtain the assistance of counsel. Mr. Stewart's s. 684 motion for appointment of counsel is dismissed.

Bryson, J.A.