

1983

C.K. No. 6760

IN THE COUNTY COURT OF DISTRICT NUMBER FOUR

BETWEEN:

GERALD E. LANDRU

APPELLANT

- and -

HER MAJESTY, THE QUEEN, on the
information of J.F. MacLean

RESPONDENT

HEARD: At Kentville, Nova Scotia, this 17th day
of January, A.D., 1984.

BEFORE: His Honour Judge Donald M. Hall, J.C.C.

DECISION: The 20th day of January, A.D., 1984

COUNSEL: Robert C. Stewart, Esq. and Greg J. Turner,
Esq. for the appellant.

George R. Lohnes, Esq. for the Crown.

1983

C.K. No. 6760

IN THE COUNTY COURT OF DISTRICT NUMBER FOUR

BETWEEN:

GERALD E. LANDRU

APPELLANT

- and -

HER MAJESTY, THE QUEEN, on the
information of J.F. MacLean

RESPONDENT

This is an appeal of a conviction on a charge under section 96(2) of the Motor Vehicle Act entered against the appellant by his Honour Judge K.L. Crowell, a judge of the Provincial Magistrate's Court, at Kentville, N.S., on July 20, 1983.

At the commencement of the trial the appellant informed the court that he wished to be represented by Mr. Wray Parr as his agent. Mr. Parr was not a barrister and offered his services free of charge. The trial judge would not allow Mr. Parr to represent the appellant and proceeded with the trial which resulted in the appellant being convicted.

The ground of appeal is set out in the notice of appeal as follows:

The appellant seeks an Order to set aside the order and to permit the appellant to be represented by a person who is not a barrister of the Supreme Court of Nova Scotia on the following grounds:

- (1) that the learned Trial Judge erred in holding that Wray Wright Parr, who is not a barrister of the Supreme Court, is not entitled to act as agent or counsel at the summary conviction trial;
- (2) that the learned Trial Judge erred in holding that only a barrister of the Supreme Court of Nova Scotia is, within the meaning of Section 735(2) and 737(2) of the Criminal Code, entitled to act as counsel or agent on behalf of an accused person on a summary conviction trial.

By this I understand that the appellant is seeking a new trial on the ground that he was denied the right to make his full answer and defence when the trial judge refused to permit him to be represented by an agent.

Section 737 of the Criminal Code provides inter alia, as follows:

- (1) The prosecutor is entitled personally to conduct his case, and the defendant is entitled to make his full answer and defence.
- (2) The prosecutor or defendant, as the case may be, may examine and cross-examine witnesses personally or by counsel or agent.

By virtue of section 5(1) of the Summary Proceedings Act, S.N.S. 1972, C.18 the provisions of the Criminal Code

respecting offences punishable on summary conviction apply to summary offences under the statutes of this province. Therefore, section 737 applies to the present case.

Counsel for the respondent contended that although the Code purported to authorize a defendant in a criminal case to be represented by an agent, the performing of such a function by a person who is not a barrister and a member of the Nova Scotia Barristers' Society is in contravention of the Barristers and Solicitors Act, R.S.N.S., 1967, C.18, since, as he contended, it amounted to practicing as a barrister.

Section 4 of the Barristers and Solicitors Act provides, inter alia, as follows:

- (1) No corporation shall carry on the practice or profession of a barrister and no person who is not a member of the Society and entitled to practise as a barrister shall carry on such practice or profession.
- (2) The carrying on of the practice or profession of a barrister includes for all purposes of this Act the doing by any person for fee, gain, or reward, direct or indirect, of any of the following things, that is to say:
 - (a) drawing or preparing a deed, mortgage, release, assignment or testamentary document;
 - (b) drawing or preparing any document relating to the incorporation, organization, or winding up of a corporation;
 - (c) drawing or preparing any document to be used in proceedings in any court in the Province;
 - (d) appearing in or before any court, public board, or commission on behalf of another person.
 - (e) giving legal advice to any person. 1965, c.20, s.2(2)

In the context of the foregoing the Shorter Oxford English Dictionary, Third Edition, defines "practice" and "profession" respectively as follows:

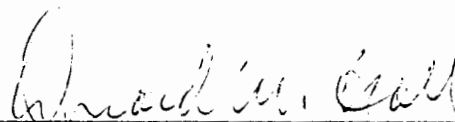
"practice" - The exercise of a profession or occupation; the professional work or business of a lawyer or medical man.

"profession" - The occupation which one professes to be skilled in and to follow. a. A vocation in which a professed knowledge of some department of learning is used in its application to the affairs of others, or in the practice of an art founded upon it. Applied spec. to the three learned professions of divinity, law, and medicine; also to the military profession. b. In wider sense: Any calling or occupation by which a person habitually earns his living. c. The body of persons engaged in a calling.

It appears to me that in order to be engaged in the practice or profession of a barrister one must perform services usually performed by a barrister "for fee, gain or reward, direct or indirect." Since Mr. Parr was not to receive any remuneration he was not engaged in or seeking to engage in the practice or profession of a barrister. Accordingly section 4 of the Barristers and Solicitors Act does not apply to him and may not be invoked to deny a defendant of the right to be represented by an agent.

The words of section 737(2) are very clear that a defendant may be represented at his trial by an agent: see Regina v. Duggan (1976) 31 C.C.C.(2d) 167. Since the appellant was denied this right he was denied his right to make full answer and defence resulting in a serious miscarriage of justice.

Accordingly the appeal must be allowed and a new trial ordered. The appellant shall have his costs of this appeal to be taxed.



Donald M. Hall
Judge of the County Court of District
Number Four