COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *R. v. Fox*,
2021 BCCA 308

Date: 20210810
Dockets: CA46979; CA47391

Docket: CA46979

Between:

Regina

Respondent

And

Patrick Henry Fox

Appellant

- and -

Docket: CA47391

Between:

Regina

Respondent

And

Patrick Henry Fox

Appellant

Before: The Honourable Mr. Justice Fitch
(In Chambers)

On appeal from: Orders of the Provincial Court of British Columbia, dated August 19, 2020 (conviction) (*R. v. Fox*, Vancouver Docket 244069-6-B), and November 26, 2020 (conviction and sentence) (*R. v. Fox*, Vancouver Docket 244069-7-B).

The Appellant, appearing in person (via videoconference): P.H. Fox

Counsel for the Respondent: D.M. Layton, Q.C.

Place and Date of Hearing:	Vancouver, British Columbia August 6, 2021
Place and Date of Judgment:	Vancouver, British Columbia August 10, 2021

Summary:

Applications pursuant to s. 684(1) of the Criminal Code for court-appointed counsel on two appeals—CA46979 and CA47391. Held: On the conviction appeal in CA47391, an order was made appointing counsel for the limited purpose of bringing on a "full" s. 684 application. The application for an order appointing counsel on the sentence appeal in CA47391 was dismissed. On CA46979, the appellant had unsuccessfully applied on a previous occasion for an order appointing counsel for the limited purpose of bringing on a "full" s. 684 application in relation to the appeal from conviction. Having failed to obtain a limited order, the appellant applied for an order appointing counsel to act for him on the appeal from conviction. The appellant argued that as the renewed application took a different form than the one previously dismissed, he was not required to demonstrate a material change in circumstances to obtain the relief sought. The application on CA46979 was dismissed. Where an application made pursuant to s. 684(1) is dismissed—even one framed (or treated) as an application for a limited appointment of counsel order—resort to s. 684(1) is exhausted unless the appellant establishes a material change in circumstances. No material change in circumstances that could possibly shift judicial evaluation of the interests of justice criterion was shown in this case.

I. Introduction

[1] The appellant applies pursuant to s. 684(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 [*Code*] for orders appointing counsel to act on his behalf in two appeals.

[2] The application in Appeal No. CA47391 is an originating application. The appellant seeks a "limited order" appointing counsel to assist him in preparing and arguing the application for court-appointed counsel. It is not uncommon in this jurisdiction for appellants to frame (or for the Court to treat) s. 684 applications as applications for this type of limited relief, deferring resolution of the "full" application for court-ordered counsel on the appeal to a later date. Doing so may serve the interests of justice by fostering a more informed resolution of the application in cases where it is difficult to assess the merits of an appeal without the assistance of counsel.

[3] The application in Appeal No. CA46979 is the second occasion on which the appellant has applied for an appointment of counsel order on that appeal. By his first application, the appellant sought an order appointing counsel for the limited purpose of perfecting and bringing on the "full" application. That application was dismissed by

Justice Griffin on December 17, 2020 (*R. v. Fox* (17 December 2020), Vancouver CA46979 (B.C.C.A.)). Having failed to obtain a limited order, the appellant now applies for an order appointing counsel to act for him on his appeal from conviction. He submits that as the application before me takes a different form than that which was before Griffin J.A., he is not required to demonstrate a material change in circumstances that justifies the making of the order sought. The Crown says the appellant's application in Appeal No. CA46979 has been dismissed and that to obtain relief the appellant must now establish a material change in circumstances that justifies an order appointing counsel. The Crown submits that the appellant has failed to establish that a material change in circumstances has occurred since the first application was dismissed.

II. Overview

1. Background Facts

[4] Since 2014, the appellant has engaged in a relentless campaign of harassment directed at his former spouse. Among other things, the appellant created a website in the name of his former spouse. The website contains a large amount of private information about the appellant's former spouse and others with whom she is associated. The purpose of the website appears to be to denigrate, humiliate and intimidate her, to interfere with her personal relationships, and to impair her economic prospects and emotional security.

[5] On June 28, 2017, a jury found the appellant guilty of criminal harassment and being in possession of firearms in an unauthorized place contrary to ss. 264 and 93(1) of the *Code*. In her reasons for sentence delivered November 10, 2017 (and indexed as 2017 BCSC 2361), Justice Holmes (as she then was) noted that the appellant "delighted publicly in the harm he was causing her." She imposed a sentence totaling 46 months' imprisonment. With credit given for time served, the sentence actually imposed on the appellant permitted the making of a probation order: see *R. v. Mathieu*, 2008 SCC 21. The probation order included a condition prohibiting the appellant from disseminating, distributing, publishing, or making

publicly available in any manner whatsoever, directly or indirectly, information, statements, comments, videos or photographs which referred to or depicted, by name or description, the appellant's former spouse, or any of their friends, relatives, employers or co-workers. In her reasons for sentence, Holmes J. described the appellant as "intelligent and capable", and noted that he had presented his defence in an organized fashion. Having case-managed the appellant's appeals for a considerable time, these observations reflect my own assessment of the appellant's capabilities.

[6] The appellant appealed his 2017 conviction and sentence (Appeal No. CA44915). A limited s. 684 order was made appointing counsel to assist the appellant in perfecting and arguing the "full" application for court-appointed counsel. That application was subsequently dismissed by Justice Garson for reasons indexed as 2018 BCCA 431 (Chambers). Justice Garson noted that the appellant was "well-educated and intelligent" and "capable of researching and marshalling evidence, researching the law, and making arguments on his own behalf." His ability to do so was demonstrated by the "meticulous" way in which the application was prepared. The appellant's conviction and sentence appeals were eventually dismissed for want of prosecution and for repudiating the jurisdiction of the Court. Reasons for judgment are indexed as 2019 BCCA 211.

2. Events Giving Rise to Appeal No. CA46979

[7] By letter dated June 6, 2019, the appellant disclosed to the police that he had created a new website directed at his former spouse which contained similar content. He asked to be charged with criminal harassment and breach of probation "by publishing the new website."

[8] The appellant was charged with breaching the aforementioned condition of the probation order imposed by Holmes J. by making publicly available a website containing information about his former spouse. At trial, the appellant admitted to creating and publishing the website and acknowledged that he was bound by the probation order during the period covered by the Information. The sole point in

dispute related to when the website was first published and whether this was relevant to proof of the offence charged. The appellant, who did not testify, argued that the evidence allowed for the possibility that he published the website before the probation order came into effect. He submitted that the failure to take down the website did not breach the relevant condition of the probation order. The Crown argued that it did not matter when the website was first published, because it remained in existence and was "publicly available" during the time set out in the Information.

[9] On August 19, 2020, the appellant was convicted following a trial in the Provincial Court of British Columbia before the Honourable Judge Phillips of breaching the probation order imposed by Holmes J. on November 10, 2017. In her unreported reasons for judgment (*R. v. Fox* (19 August 2020), Vancouver 244069-6-B (B.C.P.C.)), the judge found that the relevant condition was expansive in that it prohibited making the information in issue publicly available "in any manner whatsoever, directly or indirectly". Having served four months in pre-sentence custody (for which he was given six months' credit), the appellant was sentenced on the same day to one day in jail to be followed by a six-month probation order. In addition to the statutory terms, the probation order contained the following optional condition:

> Within 48 hours of your release from custody you will take all necessary steps to ensure that any website, social media page, or other publication, which you have authored, created, maintained or contributed to, which contains any information, statements, comments, videos, pictures which refer to or depict, by name or description, [your former spouse] or any of her friends, relatives[,] employers or co-workers, including the websites published under the domain [website domain name deleted] and [website domain name deleted] are no longer available via the [I]nternet or by any other means.

[10] The appellant appealed his conviction and sentence (Appeal No. CA46979). The appellant was denied funding for both appeals by Legal Aid BC. The denial was not for financial reasons. (The appellant has since filed a notice of abandonment in relation to the sentence appeal.)

[11] As noted earlier, the appellant applied for a limited order under s. 684 appointing counsel to perfect and argue the application itself. In dismissing the application, Griffin J.A. accepted that the appellant did not have sufficient financial means to independently obtain legal assistance. She found, however, that it was not in the interests of justice to grant the order sought for the following reasons:

> [18] The applicant's identified ground of appeal is, in my view, quite uncomplicated and easy enough for him to state, relying on the terms of the judgment, indictment, and probation order. In essence, he simply states that the term of the probation order, which he was charged with breaching, did not state that he was required to remove material published before the probation order came into effect and that the Crown did not prove the website was published after that order. The appeal will turn on, it seems, interpretation of term 13 of the probation order, which prohibited the applicant from making the website publicly available "in any manner whatsoever, directly or indirectly".
>
> [19] Further, I note the penalty imposed is not significant in comparison to other crimes. I am advised and take into account the fact that the applicant now faces new breach charges for breach of the order that arose from this conviction.
>
> [20] I note that this Court did make a limited s. 684 order in the applicant's favour before, in relation to his appeal from a criminal harassment conviction, in reasons indexed at 2018 BCCA 431 [(Chambers)]. However, that was a more serious charge and arguably would be more complicated than a breach of probation order charge.
>
> [21] After weighing the various factors, in my view it is not in the interests of justice to appoint counsel for the limited purpose of preparing for a full s. 684 application. In my view, the applicant is well able to represent himself on what is an uncomplicated appeal from a breach of probation order, where the penalty was not extreme.

[12] On June 18, 2021, the appellant filed a further notice of motion and new affidavit seeking an order appointing counsel to act on his behalf on the appeal from conviction in Appeal No. CA46979. This second application is one of the two applications that are before me for determination.

3. Events Giving Rise to Appeal No. CA47391

[13] The appellant was subsequently charged with breaching the optional condition of the probation order imposed by Phillips P.C.J. on August 19, 2020. The offence was alleged to have been committed between August 19, 2020, and September 16, 2020.

[14] The appellant was tried in the Provincial Court of British Columbia before the Honourable Judge Rideout.

[15] The only witness called at trial was Detective Constable Kyle Dent. The appellant did not testify.

[16] Det/Cst. Dent testified that on September 16, 2020, he accessed one of the website domain names referred to in the probation order imposed by Phillips P.C.J. Its home page contained an entry dated August 19, 2020, at 1:53 p.m., which was written as a first-person letter to the Attorney General of British Columbia. As I understand it, the appellant contends that this letter was written the day before the probation order came into effect. The entry refers to the proceedings before Phillips P.C.J. and emphasizes "how ineffectual and impotent the Canadian justice system is [because] [t]hey can't even make a little pissant nobody like myself take down a website." The entry further asserts that "[t]hey can lock me up for the rest of my life, but I will never take down the website."

[17] Det/Cst. Dent also testified about statements the appellant made to him during an interview on September 17, 2020. I take this summary of statements made by the appellant to the police from the Crown's memorandum of argument:

- At the outset of the interview the appellant told Det/Cst. Dent it was important to have a good quality audio and video recording of the interview so he could post it to the website later;
- The appellant admitted that the website had been updated, but did not admit to personally posting anything on it. At the same time, the appellant said a lot more content needed to be added to the website, but that it was very time consuming and "I haven't been the most productive";
- The appellant acknowledged that he had been ordered to take down the website but said he believed it was not illegal and exposed corruption in the criminal justice system and the misconduct of his former spouse;

- The appellant expressed surprise that it took the police so long to arrest him; and
- The appellant said that never in his life would he take down the website.

[18] Det/Cst. Dent could not say whether the appellant had transferred ownership or control of the website to someone else after the probation order was made on August 19, 2020.

[19] The appellant argued at trial that he never admitted owning or controlling the website or publishing anything on it. He submitted that any statements he made about posting more information on the website could be understood as a reflection of his future plans once the probation order expired. He also argued that the Crown had not established that he did not, within 48 hours of his release from custody, remove the website. He submitted that it was possible the website was taken down within 48 hours of his release and subsequently put back online. In light of this alleged gap in the evidence, the appellant took the position that it had not been proved beyond a reasonable doubt that he failed to comply with the relevant condition of the probation order.

[20] In his unreported reasons for judgment convicting the appellant (*R. v. Fox* (26 November 2020), Vancouver 244069-7-B (B.C.P.C.)), Rideout P.C.J. said this:

> [19] There were statements made by Mr. Fox that clearly implicated him beyond a reasonable doubt in relation to access to the website, social media, or other publication which was prohibited by Judge Phillips. What happened within forty-eight hours remains uncertain and perhaps only speculation as to what took place, and I am not going to speculate what happened. The point is that the information contained in the website was available via the [I]nternet between the dates as set out [on the Information]. It is more than clear that it was the accused who was involved in that website. Ownership aside, he was inputting the information and from his own mouth himself, essentially convicted himself.

[21] On April 12, 2021, the appellant was sentenced to six months' imprisonment after being credited for 10 months and 15 days for time served in pre-sentence custody. In addition, he was placed on probation for one year.

[22] The appellant filed a notice of appeal from conviction and sentence on April 15, 2021.

[23] On the appeal from conviction, the appellant alleges that the Crown failed to make timely pre-trial disclosure of his interview with Det/Cst. Dent. He will also argue that the verdict is unreasonable. On the sentence appeal, the appellant alleges that the judge below erred by failing to order the Crown to disclose certain material to him so he could prepare his sentencing submissions. In addition, the appellant will argue that the judge erred by refusing to grant him an adjournment to permit the preparation of sentencing submissions when, according to him, the Crown unexpectedly asked for a probation order. Finally, the appellant asserts that the sentence imposed is so excessive as to be clearly unreasonable. On this latter point, I understand the appellant to take issue primarily, if not exclusively, with the probation order.

[24] The appellant applied for but was refused funding for these appeals by Legal Aid BC. The refusal was not because the appellant was financially ineligible for legal aid.

[25] The appellant has, since being denied funding by Legal Aid BC, raised additional grounds of appeal in relation to Appeal No. CA47391, including the alleged non-disclosure of a transcript of Constable Irmalov that was referred to by the judge in the sentencing proceedings, and an alleged internal contradiction in the evidence given by Det/Cst. Dent. On the first point, it is unclear to me whether the judge had something before him on sentencing the appellant did not have, or whether he simply misspoke and meant to refer to the transcript of the interview of the appellant conducted by Det/Cst. Dent.

[26] The appellant was given the opportunity to ask Legal Aid BC to reconsider its decision not to fund this appeal based on the newly articulated grounds of appeal. He declined to avail himself of that opportunity noting that, in his view, it would make no difference to the outcome.

III. Analysis

1. General Principles

[27] The considerations on an application under s. 684 of the *Code* were summarized in *R. v. Silcoff*, 2012 BCCA 463 (MacKenzie J.A. in Chambers):

> [21] Appointment of counsel under s. 684 is subject to a two-part test, generally considered in the following order:
>
> 1. The accused must have insufficient means to obtain legal assistance; and
>
> 2. Appointment of counsel must be in the interests of justice.
>
> [22] … applicants should generally be able to show that 1) they cannot afford to retain counsel for the appeal; and 2) they applied to the Legal Services Society for legal aid and were refused.
>
> [23] The factors to be considered under the requirement of "interests of justice" were summarized in *International Forest Products Ltd. v. Wolfe*, 2001 BCCA 632 at para. 6 and 13, 94 B.C.L.R. (3d) 67 (Levine J.A. in Chambers). They are as follows:
>
> a. The points to be argued on appeal;
>
> b. The complexity of the case;
>
> c. Any point of general importance in the appeal;
>
> d. The applicant's competency to present the appeal;
>
> e. The need for counsel to find facts, research law or make argument;
>
> f. The nature and extent of the penalty imposed; and
>
> g. The merits of the appeal.
>
> [24] As to the merits of the appeal, the threshold requirement is an arguable appeal: *R. v. Donald*, 2008 BCCA 316 at para. 15, 258 B.C.A.C. 117 (Saunders J.A. in Chambers).
>
> [25] In determining whether an appeal is arguable, regard must be had to the applicable standard of review on the proposed appeal: *Lin v. British Columbia (Adult Forensic Psychiatric Services)*, 2008 BCCA 518 at paras. 17-18 (Frankel J.A. in Chambers).
>
> [26] Even where other factors favour the appointment of counsel, it will not be in the interests of justice to appoint counsel where an appeal has no merit: *R. v. Hoskins*, 2012 BCCA 51 at paras. 30-32, 315 B.C.A.C. 238 (Garson J.A. in Chambers).
>
> [27] The Court may consider the opinion of the Legal Services Society that an appeal has no prospect of success, however, the opinion of the Legal Services Society is only one factor: *R. v. Chan*, 2001 BCCA 138 at para. 8 (Finch J.A., as he was then, in Chambers); *R. v. Butler*, 2006 BCCA 476 at paras. 7 and 10 (Rowles J.A. in Chambers).

[28] On both applications, the Crown accepts that the appellant lacks the means necessary to independently retain counsel.

[29] The issues that arise on Appeal No. CA46979 may be stated as follows:

a) Absent demonstration of a material change in circumstances, does the appellant have a right to apply for an order under s. 684(1) of the *Code* having already been denied relief under this provision?

b) If not, has the appellant demonstrated a material change in circumstances since the application for a limited appointment of counsel order was dismissed by Griffin J.A. on December 17, 2020?

c) If so, has the appellant met the test for an appointment of counsel order?

[30] The issue that arises on Appeal No. CA47391 is whether it is in the interests of justice to appoint counsel on the conviction and/or sentence appeal.

2. The Application in Appeal No. CA46979

[31] The first issue to be addressed is whether, absent a material change in circumstances, I have jurisdiction to consider afresh the appellant's application for court-appointed counsel. The appellant says I do because he seeks different relief than that which was sought on the application heard by Griffin J.A. As he puts it, "[i]n this application, I seek an appointment of counsel to prepare and present the appeal, in contrast with the previous application which was to prepare and file this application."

[32] For the reasons that follow, I do not accept that the distinction the appellant seeks to draw has legal significance.

[33] Section 684(1) of the *Code* provides as follows:

> 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 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.

[34] An application to appoint counsel for the limited purpose of assisting an appellant by preparing and presenting the application itself is an application made pursuant to s. 684(1). Such an application attracts the same framework of principles discussed in *Silcoff*. The factors that comprise the “interests of justice” criterion are, subject to such minor modifications as the circumstances require, the same in both contexts.

[35] There can be no doubt that the broad language of s. 684(1) permits the making of an order appointing counsel for the limited purpose of perfecting and arguing the “full” application. But where an application made pursuant to this section is dismissed—even one framed (or treated) as an application for a limited appointment of counsel order—resort to s. 684(1) is exhausted unless the appellant establishes a material change in circumstances: *R. v. Parchment*, 2011 BCCA 174 at paras. 12–16 (Chiasson J.A. in Chambers).

[36] A material change in circumstances is one that could conceivably alter the assessment of one or both of the statutory factors set out in s. 684(1): *R. v. Staples*, 2017 ONCA 138 at paras. 13–15 (Laskin J.A. in Chambers); *United States v. Ibrahim*, 2012 BCCA 363 at para. 9 (MacKenzie J.A. in Chambers)—employing the same test in the analogous context of successive applications for judicial interim release pending appeal.

[37] Importantly, a judge hearing the second application for relief is not engaged in a review of the first judge’s decision, which must be taken as correct, but in an assessment of whether the change in circumstances said to be material is capable of shifting the evaluation made by the judge on the first application: *R. v. Shevalev*, 2018 BCCA 388 at para. 10 (Groberman J.A. in Chambers).

[38] If a material change in circumstances is shown, the appellant must go further and establish that the test for the appointment of counsel under s. 684(1) has been met: *Staples* at para. 14.

[39] The initial application was dismissed by Griffin J.A. upon her determination that: (1) the sentence imposed was insignificant in relative terms; and (2) the appeal was uncomplicated and well within the ability of the appellant to present. None of the arguments advanced by the appellant on this application point to a material change in circumstances that could conceivably shift the evaluation of the central issues upon which the initial application was resolved. While it is possible that the argument respecting the merits of the appeal is now more fully fleshed out, it has not changed.

[40] I can identify only one change in circumstances since the first application was resolved. The appellant is scheduled to be released from custody on August 12, 2021. While he has complained in the past about the impediments to proper preparation of his appeal flowing from the fact of his incarceration, it would appear that those impediments will be ameliorated in the near future. This change in circumstances could not possibly shift judicial evaluation of the interests of justice criterion.

[41] I appreciate that the appellant may have been operating under a misapprehension at the time of the original appointment of counsel application that he could reserve the right to bring a subsequent “full” application if his application for a “limited” appointment of counsel order was refused. I note, in this regard, that the appellant was permitted on this application to make comprehensive submissions as to why an appointment of counsel order should now be made. Indeed, he filed 44 handwritten pages of argument (submitted in affidavit form), some of it devoted to this very issue.

[42] Even assuming the authority to consider the matter afresh, I would not have been inclined to make the order sought substantially for the reasons given by Griffin J.A. This appeal does not turn on the identification and application of a legal test, nor does it require legal research the appellant is ill-equipped to conduct. As Griffin J.A. observed, the issue on appeal is not particularly complicated. It will turn on whether the appellant was shown to have breached the relevant condition of the probation order. The appellant will argue that the evidence did not prove his guilt and

that the verdict is, therefore, unreasonable within the meaning of s. 686(1)(a)(i) of the *Code*.

[43] Having case-managed these appeals for a considerable period of time, I am satisfied that the appellant is more than capable of arguing the appeal from conviction in Appeal No. CA46979. I am fortified in this conclusion by the comprehensive written submissions filed by the appellant in support of this application. In these circumstances, I would similarly have concluded that the interests of justice, considered collectively, do not warrant an order appointing counsel for this conviction appeal.

[44] There is one final matter I wish to address. It is my understanding that, with the exception of the reasons for judgment, the trial proceedings have not been transcribed for this appeal. This was a one-witness trial that lasted less than a day. As noted earlier, dismissal of the application at first instance was not motivated by a finding that the appeal lacks any discernible merit. Rather, the judge who heard the application considered that the appellant was capable of arguing the straightforward issue that arises on appeal. The appellant, of course, has a right to proceed with the appeal notwithstanding the disposition of this application. When I expressed some concern that the appellant may not be able to proceed with an appeal that has not been found to be lacking in merit solely as a result of his inability to pay for transcription of the trial proceedings, Crown counsel very fairly agreed to order and file the trial transcripts required for the hearing of the appeal from conviction. The cost of doing so will be relatively insignificant. In light of the Crown's position on this issue, there is no impediment to the appellant proceeding expeditiously with this appeal once transcripts are filed.

[45] This appeal should come before me again for case management once transcripts have been filed. A hearing date will be confirmed and a timetable fixed for the exchange of factums at that time.

3. The Application in Appeal No. CA47391

[46] The sole issue on this originating application is whether it is in the interests of justice to appoint counsel to act on the appellant's outstanding appeals from conviction and sentence.

[47] The proceedings at trial and on sentencing have been transcribed.

[48] In relation to the conviction appeal in Appeal No. CA47391, the Crown, with the benefit of the appellant's affidavit filed on July 27, 2021, says it is likely the interests of justice favour granting a limited order pursuant to s. 684. Unlike the conviction appeal in Appeal No. CA46979, the grounds of appeal pertaining to disclosure raise a legal test that requires the appellant to show that: (1) the Crown breached its disclosure obligation, including its obligation to make timely disclosure; and (2) there is a reasonable possibility the breach affected the trial's outcome or its fairness (*R. v. Dixon*, [1998] 1 S.C.R. 244 at para. 34). The appellant has not directly engaged with this test and it is difficult to assess the merits of this ground of appeal on the material filed to date. I agree with the position of the Crown that whether the non-disclosure grounds of appeal are arguable is best assessed by having the appellant represented on the "full" application for court-appointed counsel.

[49] In the result, I would appoint counsel on the conviction appeal in Appeal No. CA47391 for the limited purpose of evaluating the proposed grounds of appeal and, if counsel so appointed considers that the appeal from conviction has sufficient merit, to prepare and argue a "full" s. 684 application on behalf of the appellant. That application should be brought as soon as is reasonably possible. To be clear, I am not limiting the scope of the limited appointment to the non-disclosure grounds of appeal. Further, if counsel acting pursuant to this order considers it necessary to order transcripts of one or more pre-trial conferences to evaluate potential grounds of appeal, they are authorized by the terms of the order I am making to do so.

[50] I take a different view of the application in so far as the sentence appeal in Appeal No. CA47391 is concerned. I do not understand the appellant to take issue with the length of the custodial sentence imposed by Rideout P.C.J. Rather, his concern appears to relate primarily to the imposition of the probation order.

[51] Based on my review of the material, I see no merit in the appellant's proposed appeal from sentence. Given his prior conduct, his steadfast resolve not to abide by court orders previously imposed upon him, and the deferential standard of review that would apply on the appeal from sentence, I think it most unlikely that a division of this Court would be inclined to interfere with the sentence imposed. In any event, I note that the appeal from the custodial portion of the sentence will, for practical purposes, almost certainly be moot by the time the matter comes on for hearing. Further, and perhaps more importantly, I have no doubt the appellant is capable of arguing the appeal from sentence, the essence of which will be that a probation order was an unreasonable component of the disposition.

[52] To the extent that the appellant asserts procedural unfairness arising out of the manner in which the sentencing proceeding unfolded, he will be given the opportunity on appeal to address these concerns and explain how they had a material impact on the sentence imposed.

[53] In all the circumstances, I do not consider that the interests of justice warrant the expenditure of public funds on the sentence appeal in Appeal No. CA47391. In coming to this conclusion, I have also taken into account, as one factor, the consideration given by Legal Aid BC to the merits of the appellant's proposed grounds of appeal against sentence and to its decision not to fund this appeal.

IV. Conclusion

[54] The appellant's application for an order appointing counsel to act on his behalf on the appeal from conviction in Appeal No. CA46979 is dismissed.

[55] With respect to the conviction appeal in Appeal No. CA47391, I order that counsel be appointed pursuant to s. 684 for the limited purpose of evaluating the proposed grounds of appeal and, if counsel so appointed considers that the appeal from conviction has sufficient merit, to prepare and argue a “full” s. 684 application on the appellant’s behalf. Counsel acting pursuant to this order is authorized to order such additional transcripts as may be necessary to consider the viability of the proposed grounds of appeal. The appellant’s application for court-appointed counsel in relation to the sentence appeal in Appeal No. CA47391 is dismissed.

[56] I close by expressing my thanks to the Law Students’ Legal Advice Program at the University of British Columbia for the assistance it has given in the resolution of these applications.

“The Honourable Mr. Justice Fitch”