

IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *R. v. Rowsell*, 2026 NLCA 32
Date: September 28, 2026
Docket Number: 202501H0055

BETWEEN:

DENNIS ROWSELL — APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING — RESPONDENT

Coram: F.J. Knickle J.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador, Corner Brook 1324A00716

Application Heard:	September 22, 2026
Judgment Rendered:	September 28, 2026
Reasons for Judgment by:	F.J. Knickle J.A.
Counsel for the Applicant/Appellant:	Self-Represented
Counsel for the Respondent:	Shawn I. Patten
Counsel for the Attorney General of Newfoundland and Labrador:	Suzanne M. Orsborn

Authorities Cited:

CASES CITED: *R. v. Ryan*, 2008 NLCA 42; *R. v. Ikkusek*, 2009 NLCA 39; *R. v. Hope*, 2012 NLCA 28; *R. v. Marshall*, 2011 NLCA 26; *R. v. Higdon*, 2021 NLCA 33; *R. v. D.R.*, 2021 NLCA 54; *R. v. Starkes*, 2019 NLCA 4; *R. v. Normore*, 2019 NLCA 12; *R. v. P.K.*, 2025 NLCA 6; *R. v. Power*, 2025 NLCA 42.

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, section 684.

RULES CONSIDERED: *Court of Appeal Criminal Rules, 2025*, rule 45.

F.J. Knickle J.A.:

INTRODUCTION

[1] Dennis Rowsell was convicted of several offences against his intimate partner after a trial in the Provincial Court of Newfoundland and Labrador. He also pleaded guilty to several offences against other individuals. These offences were unrelated to the offences against his intimate partner but the sentencing for all the offences was done at one hearing.

[2] The circumstances of the offences against his former partner were serious. Mr. Rowsell, while in a rage, assaulted his partner with a golf club by striking her in the head, for which she required a staple. He hit her further causing bruising and confined her to his bedroom. She escaped by climbing out of a window and attended the police station without shoes.

[3] The sentencing judge sentenced Mr. Rowsell to a total period of imprisonment of six years taking into account the circumstances of the offences as well as the personal circumstances of Mr. Rowsell. Mr. Rowsell possesses a lengthy criminal record, a history of violence towards his female partners, including previous convictions for aggravated assault, assault with a weapon and uttering threats in 2012, and a dismal history of disobeying court orders. His record also contained one offence of deceit.

[4] Mr. Rowsell has now appealed to this Court to have the sentence set aside on the basis that the sentence is demonstrably unfit. He submits that the sentencing judge failed to take into account that he was intoxicated at the time of the offences. He submits that the sentences were not in keeping with the ranges of similar sentences. Intertwined with his arguments that the sentence is excessive are complaints about how his lawyer at trial and sentencing represented him.

The principles governing the appointment of counsel to be paid by the Attorney General

[5] To pursue his appeal, Mr. Rowsell applies to this Court to have counsel appointed under section 684 of the *Criminal Code*, RSC 1985, c. C-46. Sections 684(1) and (2) state:

> 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.
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> (2) Where counsel is assigned pursuant to subsection (1) and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General who is the appellant or respondent, as the case may be, in the appeal.

[6] The decision to appoint counsel, to be paid by the Attorney General in a criminal matter under section 684 of the *Code*, is a discretionary decision made when such an appointment is in the interests of justice, which includes the Court being satisfied that the applicant does not have "sufficient means to obtain that assistance".

[7] Rule 45 of the *Court of Appeal Criminal Rules, 2025*, provides for the appointment of counsel in criminal appeals and under subsection 2 states the factors that are relevant to the determination of whether it is in the interests of justice to appoint counsel:

> (a) the complexity of the legal issues in the appeal;
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> (b) the potential effect of the appeal on the development of the law;
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> (c) the ability of the applicant to provide written and oral submissions;

(d) the availability of legal aid under a provincial plan providing legal aid or similar services; and

(e) whether the applicant has sufficient financial means to obtain the assistance of counsel.

[8] This Court has also repeatedly paraphrased the above considerations in the exercise of this discretion:

1. Whether the applicant has the financial means to engage counsel;

2. If the applicant does not have the financial means, whether or not legal aid will be made available to assist the applicant;

3. Whether there are serious issues to be tried on the appeal; and

4. Whether the applicant can adequately present their case and will the Court be able to decide the case without the assistance of counsel.

See *R. v. Ryan*, 2008 NLCA 42, *R. v. Ikkusek*, 2009 NLCA 39, *R. v. Hope*, 2012 NLCA 28, *R. v. Marshall*, 2011 NLCA 26, *R. v. Higdon*, 2021 NLCA 33, *R. v. D.R.*, 2021 NLCA 54, *R. v. Starkes*, 2019 NLCA 4, and *R. v. Normore*, 2019 NLCA 12.

[9] While stated slightly differently there is considerable overlap between the considerations as listed in rule 45 and as stated in this Court's jurisprudence.

[10] The rule does not refer to consideration of whether there are serious issues to be tried in the appeal, however this consideration comes within the overall concern as to whether it is in the interests of justice to appoint counsel. There can be no doubt it is not in the interests of justice to permit public resources to support the pursuit of a meritless appeal.

[11] Having said that, the early stage at which an application for the appointment of counsel is often heard by an appeal court means that the judge may not have all the relevant information that will be available at the hearing of an appeal on its merits. For this reason, the applications judge, in assessing whether or not there are serious issues to be tried, should be cautious before concluding that an appeal is devoid of merit or that there are no serious issues to be tried.

The application of the principles to the present case

[12] Applying the above principles, I am satisfied that in the circumstances of this case, it is not in the interests of justice to appoint counsel for Mr. Rowsell.

[13] Firstly, Mr. Rowsell has not provided the Court the necessary information to ascertain whether he has the financial means to retain a lawyer. He has simply asserted that he cannot afford to retain counsel. Mr. Rowsell had ample opportunity to provide the Court with more specific information regarding his financial means but has not so done. The Crown urges me to conclude that I cannot be satisfied that Mr. Rowsell does not have the financial means to retain counsel.

[14] It is true that Mr. Rowsell has not filed any information with the Court regarding his financial means. At this hearing, Mr. Rowsell stated that he has been in custody for two years, and he has no financial means. I also note that he did qualify for and was represented by the Legal Aid Commission at his sentencing for these offences. I accept that his financial circumstances likely have not improved since then, given that he has been in custody for two years. While I cannot be certain that he does not have the financial ability to retain counsel, I would not reject or allow his application solely on this basis.

[15] Even if it is accepted that Mr. Rowsell is not of sufficient means to retain private counsel, this does not, standing alone, mean that it is in the interests of justice to appoint counsel. As stated, by F.P. O'Brien J.A. in *R. v. P.K.*, 2025 NLCA 6, at paragraph 15:

> Section 684 "does not provide an automatic right to publicly funded counsel under any circumstance" (*R. v. Normore*, 2019 NLCA 12, at para. 15). However, it provides discretion to assign counsel where it appears desirable in the interests of justice to provide legal assistance to an applicant who otherwise would not have the means to obtain that assistance (*R. v. Crockwell*, 2014 NLCA 49, at para. 17; *R. v. Murphy*, 2010 NLCA 38, at para. 4).

[16] It is always preferrable that litigants have legal representation but public resources are not infinite.

[17] In terms of whether there are serious issues to be tried, the threshold for leave to appeal sentence requires more than simply asserting that the sentence should be overturned. Sentencing is a highly individual matter and is the purview of trial judges who are familiar with the circumstances of the offender, the circumstances of the

offences, and the circumstances of the community in which the sentencing takes place. In the absence of demonstrating an error in principle or that the sentence is demonstrably unfit, an appeal court will defer to the decision of the sentencing court, even if it were not the sentence that the judges of the appeal court might have imposed had they been the sentencing judge.

[18] Upon review of the sentencing decision, the sentencing judge provided thorough written reasons for his determination of sentence. He addressed the principles of sentencing, the range of sentence, and the circumstances of the offences and of Mr. Rowsell. On its face there is nothing in the judge's reasons for sentence to suggest that he had erred in principle. Having said that, I would refrain from concluding that the judge committed no error, or that it cannot be shown that the sentence is demonstrably unfit.

[19] At this stage, the Court has not had the benefit of full argument on these issues, or an opportunity to review the transcript. For this reason, I accept that there may be serious issues to be tried in relation to Mr. Rowsell's arguments that the sentence is demonstrably unfit or that the sentencing judge otherwise erred. It is only to say that on its face, it is not clear that error was committed by the sentencing judge.

[20] Similarly, Mr. Rowsell's assertion that his counsel was ineffective in her representation of him and that this ineffective representation contributed to the sentence being demonstrably unfit, if established, might justify appellate intervention in the sentencing judge's decision. Of course, the onus will be on Mr. Rowsell to establish that his counsel was ineffective. He will need to establish that counsel was incompetent and that this incompetence resulted in a miscarriage of justice. He will need to show that he was prejudiced by this incompetence. It is very easy to assert that counsel has been ineffective. It is quite another thing to establish that there has been a miscarriage of justice due to that ineffective assistance resulting in prejudice suffered by an accused.

[21] Mr. Rowsell raised three specific ways in which he believes his counsel was ineffective, but it is not clear how these decisions, or steps taken by his counsel demonstrate incompetence, much less how Mr. Rowsell was prejudiced by these decisions or steps. However, it would be premature to conclude whether Mr. Rowsell will be unsuccessful with any of these arguments without hearing all the evidence and arguments in accordance with the legal principles applicable to such determinations. I conclude that his grounds raise serious issues.

[22] The central concern in these circumstances is whether, in light of the issues raised, Mr. Rowsell will be able to adequately present his case or this Court decide the case in the absence of counsel. In assessing this consideration, the complexity of the issues of the case plays a role.

[23] There are two features of Mr. Rowsell's sentence appeal that add a layer of procedural complexity beyond a basic appeal from conviction.

[24] Firstly, unlike an appeal from conviction, there is no automatic right to appeal a sentence. Mr. Rowsell requires leave from this Court. The determination of leave to appeal includes a consideration of the merits of the grounds of appeal similar to the discussion above regarding whether there are serious issues to be heard on the appeal. These are further steps that Mr. Rowsell will need to address.

[25] Secondly, the ground of ineffective assistance adds further procedural complexity to the appeal because counsel who is the subject of the accusation will have to be given notice, will be afforded the opportunity to respond to any such arguments, and the appeal hearing may require the additional component of assessing additional evidence.

[26] While these additional steps add complexity to the appeal proceedings, they are not such that Mr. Rowsell will be unable to adequately present his case or that the Court will not be able to adequately address the arguments in the absence of counsel for Mr. Rowsell. The Court is familiar with the principles governing both granting leave to appeal sentence and ineffective assistance of counsel.

[27] Mr. Rowsell has also demonstrated that he understands the issues and has ably communicated his views to the Court. I am satisfied that with the appropriate assistance from the Court, the procedural tools available such as case management and the Court of Appeal Legal Assistance Clinic, Mr. Rowsell will be able to adequately prepare and present his case without the assistance of counsel (*R. v. Power*, 2025 NLCA 42).

[28] In conclusion, after applying the above considerations to the circumstances, I am not satisfied that it is in the interests of justice to appoint counsel to be paid by the Attorney General. It is not clear that Mr. Rowsell does not have the financial means to retain counsel, but even if he does not, I am satisfied that he can adequately present his case and this Court can adequately decide the issues.

[29] The application for the appointment of counsel is dismissed.

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F.J. Knickle J.A.