



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *R. v. Barry*, 2018 NLCA 48

Date: August 7, 2018

Docket Number: 201801H0057

BETWEEN:

KEITH BARRY

APPELLANT/APPLICANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201706G0007

Application Heard: August 7, 2018

Decision Rendered: August 7, 2018 (Orally)

Memorandum of Disposition Filed: August 7, 2018

Counsel for the Appellant/Applicant: Donald MacBeath Q.C.

Counsel for the Attorney General: Jessica Pynn

Counsel for the Respondent: Sheldon Steeves

MEMORANDUM OF DISPOSITION

Welsh J.A.:

[1] Following written and oral submissions by counsel on behalf of the Attorney General and Keith Barry, with Crown counsel conducting a watching brief, I granted Mr. Barry's application for the appointment of counsel under section 684 of the *Criminal Code*.

[2] Applying the appropriate analysis, the Attorney General acknowledged that Mr. Barry had been refused legal assistance by the Legal Aid Commission.

[3] Further, at the hearing, counsel accepted that Mr. Barry had established that he did not have the means to engage legal counsel for his appeal. I refer to the following statements in Mr. Barry's application and attached affidavit, respectively:

5. I have no income other than Provincial Government Income Support through the Department of Advanced Education and Skills and Labor, I have no assets and I am unable to retain private counsel to represent me in this appeal.

2. That I have read and understand the within Application and the contents are true and correct to the best of my knowledge, information and belief.

[4] In the absence of evidence to the contrary, that information from Mr. Barry was sufficient to establish that he does not have the means to engage counsel for the appeal. Indeed, Mr. Barry was represented by legal aid for purposes of the trial and was represented at his summary conviction appeal by counsel appointed pursuant to section 684 of the *Criminal Code*. The same counsel is representing Mr. Barry *pro bono* for purposes of this application.

[5] The question of whether Mr. Barry can adequately represent himself is related to the final criterion, whether there is a serious issue on appeal. Because this is an appeal from a summary conviction matter, Mr. Barry must obtain leave to appeal and the appeal is restricted to a question of law. These criteria increase the level of difficulty in arguing the appeal, and reduce Mr. Barry's ability to adequately represent himself.

[6] Further, I was satisfied that the issues are such that the Court would benefit from the submissions of counsel. The focus of the appeal relates to whether Mr. Barry's trial was fair and whether there was a miscarriage of justice based on the decision of the trial judge to proceed in Mr. Barry's absence. At

this stage of the proceedings, I could not conclude that there is no serious issue in the appeal.

[7] In the result, I granted Mr. Barry's application for the appointment of counsel pursuant to section 684 of the *Criminal Code*.

B. G. Welsh J.A.