

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *M.P.W. v. Victoria (City)*,  
2023 BCCA 111

Date: 20230227  
Docket: CA46915

Between:

**M.P.W.**

Appellant  
(Plaintiff)

And

**City of Victoria, Mark Knoop and Cory Moore**

Respondents  
(Defendants)

Before: The Honourable Justice Skolrood  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated  
June 9, 2020 (*M.P.W. v. City of Victoria*, 2020 BCSC 858, Victoria Docket S124134).

## Oral Reasons for Judgment

The Appellant, appearing in person  
(via videoconference):

M.P.W.

Counsel for the Respondents:

D. G. Butcher, K.C.  
C. Fleck

Place and Date of Hearing:

Vancouver, British Columbia  
February 27, 2023

Place and Date of Judgment:

Vancouver, British Columbia  
February 27, 2023

**Summary:**

*The applicant appellant applies for, inter alia, appointment of counsel. Held: Application dismissed. There is no statutory authority that would allow this Court to appoint state-funded counsel for the appellant, and this is not an exceptional case where state-funded counsel should be appointed for an appeal.*

**SKOLROOD J.A.:**

**Introduction**

[1] The appellant applies for the following three orders:

- a) Leave for an interlocutory appeal to the Supreme Court of Canada;
- b) Appointment of counsel on his behalf; and
- c) An order “that will bring this court into compliance with the *Charter*” and other legislation.

[2] The appeal challenges a decision from the Supreme Court of British Columbia (indexed at 2020 BCSC 858), dismissing his claim for damages arising out of an allegedly wrongful arrest and negligent investigation in 2010.

**Background**

[3] The background to this appeal was summarized by Justice Fisher in an application to remove the appeal from the inactive list (2022 BCCA 113 (Chambers)):

[2] The appellant sued the City of Victoria and two officers of the Victoria Police Department for alleged wrongful arrest and negligence in connection with their investigation of allegations made in 2010 by a seven-year-old family member, VW, of sexual impropriety on his part. The police arrested the appellant without a warrant on November 30, 2010, and released him four hours later. In early January 2011, the Crown decided it would not charge the appellant.

...

[4] The trial proceeded over 15 days in September and October of 2019, followed with written submissions by the parties. The respondent, Det. Mark Knoop, was the investigating officer who interviewed the complainant and her mother. The respondent, Cst. Cory Moore, was the officer who arrested the appellant. In lengthy reasons for judgment, released June 9, 2020, the trial

judge dismissed all of the appellant's claims. In assessing the credibility of the witnesses, the judge described a number of issues that raised concerns for her about the credibility of the appellant's evidence. She found that the respondent Det. Knoop did not carry out a negligent investigation and that both Det. Knoop and Cst. Moore had reasonable grounds to arrest the appellant.

[5] The appellant filed his notice of appeal on July 8, 2020. Since then, he has obtained extensions of time to file the appeal record, transcripts, appeal book and his factum. On November 4, 2020, Justice Groberman granted the appellant an extension of time to November 30, 2020 to file the appeal record and to December 31, 2020 to file transcripts, with liberty to apply for a further extension. The appellant filed an appeal record on November 30 (although the respondents say it was incomplete), as well as a Notice of Constitutional Question, and sought further extensions of time for the other documents. On December 23, 2020, Justice Hunter granted him an extension of time to March 25, 2021 to file transcripts and the appeal book and to May 15, 2021 to file his factum. On March 26, 2021, the respondents consented to a further extension of time to May 7, 2021 and June 25, 2021, respectively.

[6] The appellant filed transcripts on May 7, 2021, and the respondents consented to a further extension for filing the appeal book.

[7] On June 1, 2021, the respondents filed a certificate of costs certifying, by consent, that their costs against the appellant at trial had been allowed in the amount of \$65,000.

[8] On June 22, 2021, the respondents consented to extend time to August 20, 2021 for the appellant to file his factum and the appeal book. On August 19, 2021, they consented to another extension, to September 3, 2021, and subsequently to further extensions, first to September 14, 2021, and finally to September 17, 2021.

[9] On September 15, 2021, the matter was placed on the inactive appeal list, pursuant to s. 25(1) of the Court of Appeal Act. In doing so, the Registry notified the appellant that if no steps are taken, the appeal will stand dismissed as abandoned pursuant to s. 25(5) on March 15, 2022.

[10] Meanwhile, the appellant met the September 17, 2021 deadline but was unable to file his factum and appeal book due to its placement on the inactive list. Hence, this application.

[4] On March 14, 2022, Fisher J.A. removed the appeal from the inactive list. On September 15, 2022, the appeal was again placed on the inactive list after the appellant failed to comply with the order of Fisher J.A.

[5] On January 12, 2023, Justice DeWitt-Van Oosten granted leave to the appellant to proceed with his appeal against the respondent City of Victoria, but dismissed his application as against the individual respondents, Mark Knoop and

Cory Moore (indexed at 2023 BCCA 14 (“DeWitt-Van Oosten Decision”)). The appellant takes issue with the latter order.

**Discussion**

[6] As a general preliminary comment, I note that the principal basis for the orders sought, and indeed much of the explanation provided by the appellant for the delays to date in prosecuting his appeal, relates to what he describes as his cognitive disabilities that significantly impact his energy levels, his ability to read, comprehend material, and follow instructions, and his capacity to stay focused and committed to tasks (see DeWitt-Van Oosten Decision at para. 24). The alleged failure to accommodate his disability is also a principal ground of appeal from the decision below.

[7] In terms of the first order sought by the appellant, this Court has no jurisdiction to order an interlocutory appeal to the Supreme Court of Canada. Appeals to the Supreme Court of Canada are generally by leave of that Court pursuant to s. 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26. Certain exceptions to this general rule are set out in the *Supreme Court Act*, including in s. 37 which provides:

**Appeals with leave of provincial court**

...an appeal to the Supreme Court lies with leave of the highest court of final resort in a province from a final judgment of that court where, in the opinion of that court, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision.

[8] The *Supreme Court Act* does not allow for this Court, and certainly not a single justice sitting in chambers, to grant leave on an interlocutory appeal nor are there provisions in the *Court of Appeal Act*, S.B.C. 2021, c. 6 authorizing this Court to do so.

[9] Simply put, this Court has no jurisdiction to grant the first order sought by the appellant.

[10] I would add that what the appellant appears to be trying to do by way of this application is challenge the decision of DeWitt-Van Oosten J.A. declining to permit him to continue with his appeal involving the two named individual defendants, thus effectively terminating that claim. While s. 29 of the *Court of Appeal Act* and R. 62 of the *Court of Appeal Rules*, B.C. Reg. 120/2022 [*Rules*] have provisions governing such review applications, the appellant has not followed the required procedure. Certainly, there is no jurisdiction for a single justice sitting in chambers to engage in such a review. Further, and in any event, he has not demonstrated any error on the part of DeWitt Van-Oosten J.A. that would warrant intervention by a division of the Court.

[11] I would therefore dismiss the application for the first order sought.

[12] I will deal next with the third order sought, that the Court make an order bringing itself into compliance with the *Charter* and other legislation. The basis for the order sought seems to be that there has been insufficient accommodation for the appellant's disability and that the City has somehow taken advantage of that disability.

[13] Respectfully, the relief sought is not stated in a manner that could form the basis of an order of this Court. For example, the application does not seek an order that specific steps be taken or that the appellant be granted dispensation from particular requirements of the *Rules*. Nor does it seek to compel the City to do or refrain from doing any specific acts.

[14] I would add that, as is apparent from my review of the procedural history, the appellant has been granted considerable accommodation to date in terms of excusing him from strict adherence to the timelines for prosecuting his appeal.

[15] I would therefore dismiss his application for the third order sought in his notice of application.

[16] That leaves the appellant's application for the appointment of counsel. The appellant has raised valid concerns about the ability of persons with disabilities to

navigate the judicial system and to advocate on their own behalf. Counsel for the City candidly admits that the appointment of counsel for the appellant would likely be of assistance to both him and the Court.

[17] However, the appellant has not cited any authority on which this Court could make such an order. Unlike in criminal matters, in which s. 684 of the *Criminal Code*, R.S.C. 1985, c. C-46 specifically authorizes the court to appoint counsel for an accused person, there is no similar statutory authority in the civil context.

[18] There is also authority under the *Family Law Act*, S.B.C. 2011, c. 25, s. 203, for the Court to appoint counsel for children in a high-conflict family law dispute. However, under that section, the Court can allocate the costs of the lawyer between the parties. It does not contemplate a publicly-funded lawyer.

[19] The Court also has the authority to appoint *amicus* to assist the Court. However, as doing so effectively amounts to the Court ordering the expenditure of public funds, such orders will only be made in exceptional circumstances when the appointment of *amicus* is essential to the Court fulfilling its obligations: *J.E.S.D. v. Y.E.P.*, 2018 BCCA 286 at para. 85.

[20] Apart from statute, there is no legal rule or general principle of law supporting court ordered appointment of state-funded counsel, at either trial or on appeal, for individuals involved in largely private litigation. It would of course be open to the legislature to implement a program for providing legal assistance to persons with disabilities who are engaged in the justice system. However, that is a legislative and policy choice for government.

[21] In *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, the Supreme Court of Canada noted at para. 21 that “general access to legal services is not a currently recognized aspect of the rule of law”. State-funded counsel for an appeal is exceptional. In the civil context, it has been allowed where the right to security of the person under s. 7 of the *Charter* is engaged (see *New Brunswick*

*(Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 at para. 2). That is not this case.

[22] I would note as well that despite the appellant’s disability, he has to date been able to advance his appeal, albeit aided by a flexible application of the governing time limits. Further, even a cursory review of the factum filed by the appellant demonstrates a detailed understanding of the evidence at trial and an ability to articulate and advance his arguments on appeal. Justice DeWitt Van-Oosten made similar observations in her reasons at paras. 43–45.

[23] In summary, there is no basis upon which the Court can grant the application to appoint counsel for the appellant.

**Conclusion**

[24] The application is dismissed in its entirety.

[25] I would add that both parties during their submissions raised issues about how the litigation, including this appeal, has been conducted to date. I am not prepared to make any findings about that today, but will simply note that the division who ultimately hears the appeal, will likely consider the entirety of the circumstances surrounding the appeal, and the parties conduct throughout, when considering an appropriate costs award.

[Discussion with parties re: further case management]

[26] **SKOLROOD J.A.:** The order of DeWitt-Van Oosten J.A. contemplated some new filing deadlines for the applications that M.P.W. is proposing to bring, to be set through case management within 15 days of today’s date. A case management conference will be scheduled for Monday, March 13, 2023 at 9:30 a.m. before a justice. M.P.W. may attend by videoconference.

“The Honourable Justice Skolrood”