Citation: R v Grant, 2019 MBCA 51 Date: 20190506
Docket: AR18-30-09190

IN THE COURT OF APPEAL OF MANITOBA

B E T W E E N :

HER MAJESTY THE QUEEN	)	***M. Buchart***
	)	*for the Applicant*
(Respondent) Respondent	)	
	)	***J. W. Avey***
- and -	)	*for the Respondent*
	)	
GENEVIEVE L. GRANT	)	*Chambers motion heard:*
	)	***April 4, 2019***
(Accused) (Appellant) Applicant	)	
	)	*Decision pronounced:*
	)	***May 6, 2019***

MICHEL A. MONNIN JA

[1] The applicant seeks leave to appeal from a decision of a summary conviction appeal judge (the appeal judge) who dismissed her appeal from a Judicial Justice of the Peace (JJP) who had convicted her of a photo radar speeding ticket, fining her $233.25, and imposing a six-month driving suspension.

[2] The applicant was charged with speeding on February 6, 2016, contrary to *The Highway Traffic Act*, CCSM c H60 (the *HTA*). The City of Winnipeg issued an image capturing enforcement system offence notice (photo radar) to the applicant on February 11, 2016. The offence notice was issued by a special constable appointed under *The Police Services Act*, CCSM c P94.5 (the *PSA*) who signed the offence notice as a "peace officer".

[3] The applicant pleaded not guilty to the charge by mail and the matter was set down for trial on August 21, 2017, before a JJP.

[4] On August 18, 2017, the applicant filed a notice of motion, returnable before a Provincial Court judge (PCJ) on August 23, 2017, seeking a judicial stay of proceedings on the grounds that her rights under section 11(*b*) of the *Canadian Charter of Rights and Freedoms* had been breached because of prosecutorial delay.

[5] At trial, during closing submissions, the applicant challenged the jurisdiction of the special constable to issue the ticket, as he was not a "peace officer" seeking to have the information quashed as being void *ab initio*. She was unsuccessful. The JJP stated: "So this motion to quash this ticket was raised during closing arguments. These types of motions should clearly be made prior to the trial starting and therefore I am dismissing this motion."

[6] The JJP summarily dismissed the motion because it was in breach of the Manitoba, Provincial Court, "Practice Directives for Contested Applications in the Provincial Court of Manitoba" (4 November 2013), online (pdf): *Manitoba Courts* <www.manitobacourts.mb.ca/site/assets/files/1175/notice_nov4_2013.pdf> which provide that a motion such as the applicant was seeking to advance has to be served at least 30 days before the hearing date.

[7] As stated above, the original notice of motion seeking a stay of proceedings due to delay was returnable before a PCJ. On August 23, 2017, a PCJ summarily dismissed the application, as by then the applicant had already been found guilty.

[8] The applicant appealed her conviction. In denying the appeal, the

appeal judge wrote (2018 MBQB 171 at paras 12-14):

> The respondent states that this decision is in accordance with the *Practice Directives For Contested Applications In The Provincial Court of Manitoba 2013* which provides at 6.04(1) that an application of this nature shall be filed in court not less than 30 days before the hearing date of the application. Since the [applicant] had not complied with this practice directive, and given the discretionary nature of the decision of the JJP, it was appropriate to dismiss the motion.
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> In my opinion the JJP's reasons for dismissing the application is correct on the basis of the argument advanced by the respondent and therefore I would dismiss this ground of appeal. However, I wish to go further and discuss the substantive issues raised by the [applicant] in this context because a discussion of those issues demonstrates why compliance with the practice direction is necessary for the proper administration of justice.
>
> In my opinion, the [applicant's] submission that a special constable is not a peace officer because the [*Summary Convictions Act*, CCSM c S230] does not define that term is not a matter that can be determined on the basis of the material before the court. In my opinion, simply because the *SCA* does not define "peace officer", and the fact that s. 80 of the *PSA* has not been proclaimed, does not [mean] that a special constable, or that the officer or constable in this particular case is unable to issue an offence notice pursuant to the *SCA*.

[9] The appeal judge further stated (at paras 19-21):

> In my opinion, the fact that s. 80 of the *PSA* has not been proclaimed, does not necessarily lead to the legal conclusion that a special constable is not a peace officer. While the general legislative provision . . . of the *PSA* provides peace officer status to the other seven classes of police officers set out in the *PSA*, in accordance with s. 78 of the *PSA* the "duties and powers" of a special constable are set out in his or her appointment by the director appointed under the *PSA* who "may appoint an individual or class of individuals as special constables, subject to any terms or conditions that the director considers appropriate".

> Similarly, in respect of the *HTA*, which is the legislation which creates the substantive offence of speeding pursuant to s. 95(1) of that act, the fact that the definition of "peace officer" does not specifically mention "special constable", does not preclude the applicability of the definition of peace officer in the [*The Interpretation Act*, CCSM c I80].
>
> Nor does the evidence here establish that simply because the person issuing the offence notice is described as having the rank of "special constable" means that he or she is not a "peace officer". On the face of Exhibit 1 and Schedule E (at page 16 of the appeal book) the person issuing the offence notice is not only described as a special constable but also as a peace officer. On the basis of the information before me, I can only conclude that the person who issued the offence notice in this case had the authority to do so. In my opinion there is no basis here to challenge the authority exercised by the person issuing the offence notice.

[10] In dismissing the application with respect to delay, the appeal judge wrote (at para 23):

> In my opinion, the respondent properly sets out . . . why this court ought not to interfere with the decision of the provincial judge who dismissed the s. 11(d) ***Charter*** motion summarily. The respondent properly summarizes the case law when it states in its factum:
>
> > 29. Practice Directive 6.04(1) requires that a Notice of Application be filed with the court and then on all respondents at least two days before the first returnable date and not less than 30 days before the hearing of the application. Section 11(b) *Charter* applications are pre-trial motions. As such, it does not make sense to file for a date beyond the trial date forcing the trial to be adjourned and the matter further delayed.
> >
> > 30. The Practice Directives were disregarded in this situation; the [applicant] did not file within 30 days of the trial. In fact, the trial had already concluded by the time the motion made a first appearance. The Practice Directives contain rules and guidelines to assist justice participants in ensuring that matters in Provincial Court are dealt with justly and efficiently.
> >
> > 31. Delay motions that are brought on the eve of trial are

> counter-productive. Not only do they cause further delay of the matter they pertain to, but they add delay to the system as a whole.
>
> . . . .
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> 38. Finlayson P.J. had all relevant information regarding the application before him when dismissing the motion summarily. He had the legal authority to rule on the [applicant's] requests and did not commit palpable and overriding error in doing so. The reason given for the delay in filing the delay motion was simply not reasonable and there is no basis upon which to interfere with the decision.

[11] These proceedings were initiated under the provisions of *The Summary Convictions Act*, CCSM c S230 (the *SCA*) which has since been repealed and replaced with *The Provincial Offences Act*, CCSM c P160 (the *POA*). The *POA* stipulates that an appeal from an appeal judge can only proceed with leave of a judge of this Court and on a point of law alone (see section 84). The test that an applicant must meet was recently restated by Steel JA in *Winnipeg (City of) v The Neighbourhood Bookstore and Café Ltd*, 2019 MBCA 3, as follows (at para 36):

> The test for granting leave from a decision of the Court of Queen's Bench acting as a summary conviction appeal court is threefold: the grounds of appeal must involve questions of law alone; the matter must raise an arguable case of substance; and the case must be of sufficient importance to merit the attention of the full Court (see *R v Langlois*, 2008 MBCA 72; and *R v Grant*, 2017 MBCA 84).

[12] In expanding on this, Steel JA also wrote (at paras 40, 42):

> Cases that warrant the attention of the Court will generally be those that are significant, not just for the immediate case or to the individual litigants, but in determining similar disputes which are

> likely to arise in the future and are important to the public at large (see *Meeking v Cash Store Inc et al*, 2014 MBCA 69 at para 14).
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> However, I would note that this is a second-level appeal. It has already been reviewed by a judge of the Court of Queen's Bench, which is the primary appellate court to review such matters. Such second-level appeals should be granted leave only in exceptional circumstances. There should be a compelling reason that requires leave. The fact that the issue is unusual or rare is not, in and of itself, compelling (see *R v Dickson (WA)*, 2012 MBCA 2; and *R v S (WEQ)*, 2018 MBCA 106). In the final analysis, I must determine whether there is an arguable case of sufficient substance to warrant the attention of a court for the third time.

[13] Before this Court, the applicant basically advances the same arguments that she put before the JJP and the appeal judge, that is that the proceedings were void *ab initio* because the special constable was not a peace officer and/or that the proceedings should have been stayed because of delay.

[14] The applicant further relies on a decision of this Court granting leave to appeal from a summary conviction appeal decision also dealing with the issue of delay. See *R v Grant*, 2017 MBCA 84. The argument being advanced is that if leave was granted in that case, it should also be granted in this case because the issue is similar, namely one of delay.

[15] Nowhere, however, either in oral argument or in her factum does the applicant specifically identify the errors made by the appeal judge, whose decision is the one under appeal.

[16] The appeal judge's decision both as to the issue of delay and as to the validity of the offence notice revolve around the practice directives referred to earlier in these reasons. These directives, issued on November 4, 2013, are wide-ranging directives dealing with matters in the

Provincial Court, including matters before a PCJ. The preamble to those directives provides as follows:

> **PREAMBLE TO PRACTICE DIRECTIVES FOR CONTESTED APPLICATIONS IN THE PROVINCIAL COURT OF MANITOBA**
>
> **I. The fundamental objective of the Practice Directives**
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> The fundamental objective of the Practice Directives is to reflect the public interest in having in place procedures that ensure contested proceedings in the Provincial Court of Manitoba are dealt with justly and efficiently.
>
> This includes:
>
> (1) dealing with the prosecution and the defence fairly;
>
> (2) recognizing the rights of the accused;
>
> (3) recognizing the interests of witnesses;
>
> (4) dealing with proceedings, including the scheduling of court time, in ways that consider:
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> (a) the gravity of the offence alleged;
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> (b) the complexity of what is at issue;
>
> (c) the severity of the consequences for the accused and others affected; and
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> (d) the needs of other cases.
>
> **II. How the Practice Directives address the fundamental objective**
>
> These Practice Directives address the fundamental objective by providing for:

> (1) simple, effective and efficient management of contested proceedings by the court in order to prevent unnecessary delays; and
>
> (2) the just determination of contested proceedings by requiring proper notice, and, where appropriate, documented evidence.
>
> **III. The duties of counsel, applicants and respondents**
>
> Each counsel, applicant and respondent, in the conduct of a contested proceeding, while fulfilling all applicable professional obligations, must:
>
> (1) prepare and conduct the proceeding in accordance with the fundamental objective of the Practice Directives; and
>
> (2) comply with these Practice Directives, and any other Practice Directives or orders made by the court.

[17] Practice Directive 6, which forms part of these practice directives provides the following (at 6.01(3)):

> . . .
>
> (b) Trial applications include:
>
> (i) *Charter* applications challenging the constitutionality of legislation, seeking a stay of proceedings (apart from under section 11(b)) or seeking the exclusion of evidence;

[18] It is on the basis of this directive that the PCJ dismissed the applicant's delay motion and her attempt to have the offence notice declared to be void *ab initio*. The appeal judge was of the same view.

[19] This Court dealt with the effect of practice directives in the case that

I have quoted previously in these reasons, namely *Neighbourhood Bookstore and Café* where Steel JA wrote (at para 68):

> A provincial court practice directive is, for all intents and purposes, a rule of the court. See *R v Van Wissen*, 2016 MBCA 108, where the chambers judge indicated (at para 2): "Practice directives are a well-known process by which courts regulate and control their procedures and practices."

See also *R v Giesbrecht*, 2019 MBCA 35 at paras 126, 149.

[20] The applicant wishes to re-argue the matters that she raised without success before both the PCJ and the appeal judge, but fails to deal with the reality that her application was dismissed because it was in breach of the practice directives.

[21] I have not been persuaded that the applicant has identified or advanced any legal error on the part of the appeal judge or that, if she has, it has any merit. Lastly, and possibly more importantly, I find nothing in this case that merits the investment of further judicial resources or the attention of this Court.

[22] Accordingly, leave to appeal is denied.

Michel A. Monnin JA