

**IN THE COURT OF APPEAL OF MANITOBA**

**Docket: AR16-30-08718** )

**BETWEEN:** )

**HER MAJESTY THE QUEEN** )

*(Respondent) Respondent* )

- and - )

**LOUISE MAY** )

*(Accused) (Appellant) Applicant* )

- and - )

**Docket: AR16-30-08719** )

**BETWEEN:** )

**HER MAJESTY THE QUEEN** )

*(Respondent) Respondent* )

- and - )

**DAMON BATH** )

*(Accused) (Appellant) Applicant* )

**R. I. Histed**  
*for the Applicants*

**J. D. T. Hall**  
*for the Respondent*

*Chambers motion heard:*  
**May 4, 2017**

*Decision pronounced:*  
**May 23, 2017**

**MICHEL MONNIN JA**

[1] Louise May, one of the applicants, seeks leave to appeal from a decision of a summary conviction appeal judge who dismissed her appeal from a decision of a judicial justice of the peace finding the applicant to be in breach of former section 9(b) of City of Winnipeg, by-law No 1573/77, *Traffic By-Law* (17 September 2012), for taking part in a parade without a permit.

[2] The applicant was reprimanded and was assessed costs of \$150.

[3] A co-accused, Damon Bath, also seeks leave to appeal from the same decision and on the same grounds as the present applicant. Consequently, these reasons will dispose of the two applications in the same manner.

[4] The applicants allege that the summary conviction appeal judge erred in law when he found the parade provision of *Traffic By-law No 1573/77* (the by-law) to be *intra vires* of the City of Winnipeg and further that the summary conviction appeal judge erred in finding that the by-law amounted to a reasonable limit on the applicants' fundamental freedoms of expression and assembly.

[5] The by-law under which the applicants were charged and convicted has now been repealed and replaced by another by-law.

[6] The new by-law was challenged in the same case as the applicants by two individuals, Glen Michalchuk and Gurdeep Singh who were seeking a declaration that portions of this new by-law were unconstitutional and of no force and effect. Michalchuk and Singh were unsuccessful before the summary conviction appeal judge and they have appealed that decision which they can do as of right, without the necessity of seeking leave.

[7] The test that an applicant must meet in order to be successful in obtaining leave to appeal from a summary conviction appeal decision is well settled. The issue on which an applicant seeks leave must be a question of law. In addition the question of law must be of some importance beyond the immediate case and, finally, the applicant's position on the question of law

must be both arguable and of substance. See *R v Robinson (JS)*, 2005 MBCA 69; and *R v H (CR)*, 2002 MBCA 58.

[8] It has also been stated that, as what the applicants seek is a second-level appeal, they must demonstrate that an exceptional circumstance justifies a further appeal. See *R v M (RW)*, 2011 MBCA 74.

[9] The applicants argue that the exceptional circumstance that exists in this case is that of the appeal by Michalchuk and Singh. Although the legal issue is different than the one the applicants wish to advance, both cases emanate from the same fact situation and therefore would not require additional judicial resources to deal with both appeals.

[10] Although I am satisfied that the applicants wish to raise a question of law, I have not been persuaded that the applicants have an arguable case or that the question is one of importance beyond the immediate case, especially when one considers that the by-law in question is no longer in effect.

[11] I also have not been persuaded that exceptional circumstances exist because two other individuals are advancing separate and distinguishable appeals on basically similar facts. That situation does not, in my view, eliminate the general requirements of the test on which leave can be granted.

[12] Accordingly, I would dismiss the applications.

Monnin JA

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