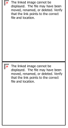



# R. v. Dick, 2002 BCCA 27 (CanLII)

Date: 2002-01-17
Docket: CA029122
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## Related decisions

- **Court of Appeal**

  R. v. Dick, 2002 BCCA 390 (CanLII) - 2002-06-14

## Legislation cited (available on CanLII)

- Constitution Act, 1982, The, Schedule B to the Canada Act 1982 (UK), 1982, c 11
- Criminal Code, RSC 1985, c C-46 — 735(2); 737(2); 800; 800(2); 802(2)
- Legal Profession Act, SBC 1998, c 9

## Decisions cited

- British Columbia Telephone Company v. Rueben, 1982 CanLII 588 (BC SC)
- R. v. Main, 2000 ABQB 56 (CanLII)
- R. v. Romanowicz, 1999 CanLII 1315 (ON CA)
- Venrose Holdings Ltd. v. Pacific Press Ltd., 1978 CanLII 378 (BC CA)

Citation: R. v. Dick Date: 20020117

2002 BCCA 27 Docket: CA029122

Registry: Vancouver

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

REGINA

RESPONDENT

AND:

ED DICK, also known as EDWARD DICK,
also known as Edward: Dick

APPELLANT

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice Huddart
The Honourable Mr. Justice Mackenzie

| | |
|---|---|
| D. Lindsay | Applying to appear as Agent for the Appellant |
| P. Meneguzzi | Counsel for the Respondent |
| C.I. Wiseman | Counsel for the Law Society of British Columbia |
| Place and Date of Hearing: | Vancouver, British Columbia |
| January 8, 2002 | |
| Place and Date of Judgment: | Vancouver, British Columbia |
| January 17, 2002 | |

Written Reasons of the Court

Reasons for Judgment of the Court:

[1] Mr. Dick's appeal is from an order of *certiorari* pronounced on October 23, 2001 by Associate Chief Justice Dohm of the Supreme Court, quashing certain subpoenas issued by a Provincial Court judge. The subpoenas were issued in the course of the trial of Mr. Dick on two counts of failing to comply with requirements to file income tax returns, contrary to s. 238(1) of the ***Income Tax Act***. At trial, Mr. Lindsay, who is not a lawyer, appeared as "agent" for Mr. Dick with the permission of the Provincial Court judge. Reference may be made to the learned judge's reasons dated November 27, 2000 in this regard: [2000] B.C.J. No. 2756 (Prov. Ct) (Q.L.).

[2] As his defence or part of it, Mr. Dick challenges the constitutionality of the ***Income Tax Act*** on the basis that it is legislation "in relation to direct taxation" and therefore lies within the exclusive jurisdiction of the provinces; and on the basis that the ***Income Tax Act*** "is not passed for the peace, order and good government of Canada and is thus *ultra vires* the Federal Government." The Provincial Court judge noted that this argument was being advanced as one of fact - i.e., that in the submissions before him, the question was framed as whether the ***Act*** "is not consistent with" the peace, order and good government of Canada as a matter of fact: [2001] B.C.J. No. 2047 (Prov. Ct) (Q.L.), at para. 34.

[3] The subpoenas were directed to the Assistant Deputy Minister of Finance and the Senior Deputy Governor of the Bank of Canada. Mr. Lindsay had advised the Provincial Court judge that it was necessary to examine these officials because:

> . . . [he] needs evidence as to how the money of the country is created, where it goes, the role of the *Income Tax Act* in relation to this creation of money, the amount of money which is principal and the amount of interest out of the national debt, the mechanics of the receipt and application of income tax revenue and the way in which government operates in realizing that revenue, and how all of those processes are integrated with the Bank of Canada, the centralized banks generally, and federal government revenue and credit functions. [para. 38]

[4] The reasons of Dohm, A.C.J. for quashing the subpoenas were very brief. He said simply that the Provincial Court judge had had:

> . . . no jurisdiction whatsoever to make such an order on that basis [that the ***Income Tax Act*** is *ultra vires*] alone, never mind the fact that the two people who were subpoenaed could not possibly have assisted the defence. [The Provincial Court judge] with all due respect, had no jurisdiction to make the order he did. The order is quashed.

Mr. Lindsay had also filed a notice of application to quash the Crown's notice of application for *certiorari*. Although Dohm, A.C.J. did not deal with it specifically, one may assume the Court also intended to dismiss it.

[5] A Notice of Appeal, signed by Mr. Lindsay as "agent" for Mr. Dick, was filed in this Court on November 2, 2001. Nothing was filed by Mr. Dick to confirm that he wished Mr. Lindsay to appear for him, and Mr. Dick did not appear for the hearing of the appeal. Mr. Lindsay informed us that he was appearing as Mr. Dick's agent and that he is not a lawyer.

[6] The Crown raised a preliminary objection to Mr. Lindsay's appearing and brought to our attention several reasons why, in the Crown's submission, Mr. Lindsay should not be accorded the privilege of audience. We use the word "privilege" advisedly, there being clear authority for the proposition that, subject to statutory provisions otherwise, it lies within a court's discretion to permit or not to permit a person who is not a lawyer, to represent a litigant in court. In particular we note the judgment of Lord Denning in ***Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service et al. (No. 1)***, [1979] 3 All E.R. 223 (C.A.) at 225, the decision of the Privy Council in ***O'Toole v. Scott et al.***, [1965] 2 All E.R. 240 at 247; the comments of this Court in ***Venrose Holdings Ltd. v. Pacific Press Ltd.*** 1978 CanLII 378 (BC CA), (1978), 7 B.C.L.R. 298 at 304, where it was said that the discretionary power to grant a privilege of audience to other persons should be exercised "rarely and with caution"; and the decision of Esson J. (as he then was) in ***B.C. Telephone Co. v. Rueben***, 1982 CanLII 588 (BC SC), [1982] 5 W.W.R. 428 (B.C.S.C.), at 434.

[7] There are strong public policy reasons for this general rule. Each court has the responsibility to ensure that persons appearing before it are properly represented and (in the case of criminal law) defended, and to maintain the rule of law and the integrity of the court generally. As was said by the Ontario Court of Appeal in ***R. v. Romanowicz*** 1999 CanLII 1315 (ON CA), (1999), 138 C.C.C. (3d) 225:

> The power to refuse audience to an agent must be invoked whenever it is necessary to do so to protect the proper administration of justice. The proper administration of justice requires that the accused's constitutional rights, particularly the right to a fair trial, be protected. It also requires the fair treatment of other participants in the process (eg. witnesses) and that the proceedings be conducted in a manner that will command the respect of the community.
>
> It is impossible to catalogue all of the circumstances in which representation by a particular agent would imperil the administration of justice and properly call for an order disqualifying that agent. Obviously, representation by agents lacking the ability to competently represent an accused endangers all aspects of the proper administration of justice, particularly the accused's right to a fair trial. Other examples where the administration of justice would suffer irreparable harm if an agent were allowed to appear are found in the material filed on this appeal. They include representation by an agent facing criminal charges involving interference with the administration of justice and representation by an agent whose background demonstrates pervasive dishonesty or a blatant disrespect for the law. Representation by persons who have convictions for crimes of dishonesty or who have otherwise demonstrated a lack of good character can only bring the administration of justice into disrepute in the eyes of reasonable members of the public. This is so even if those agents have the requisite forensic ability. We emphasize, however, that we do not suggest that a criminal record or some discreditable conduct automatically disqualifies someone from representing an accused. We are referring to situations in which the agent's criminal record or other discreditable acts are such as to permit the conclusion that the agent cannot be relied on to conduct a trial ethically and honourably. [paras. 73-74]

[8] Ms. Meneguzzi for the Crown argued that in this case, there is every reason to believe Mr. Dick's representation by Mr. Lindsay would indeed endanger the proper administration of justice, including Mr. Dick's right to a fair trial on serious charges. In particular, counsel referred to ***R. v. Main*** 2000 ABQB 56 (CanLII), (2000), 259 A.R. 163, in which the Alberta Court of Queen's Bench noted various proceedings in which Mr. Lindsay had been directly or indirectly involved. The Court said these proceedings demonstrated:

> . . . an intention not to be bound by rules and governing procedures in court. Mr. Lindsay has demonstrated by his conduct in the courts of Manitoba and in Alberta that the court cannot rely on Mr. Lindsay to represent Mr. Main in an honest and ethical manner. To allow Mr. Lindsay's application would in my view undermine the integrity of the proceedings. [para. 36]

[9] Counsel also referred to a decision of the Manitoba Court of Queen's Bench in ***Manitoba (Attorney-General) v. Lindsay***, [1997] M.J. No. 404 (Q.L.), in which the Attorney-General of Manitoba sought an injunction to prohibit Mr. Lindsay from, *inter alia*, swearing Informations against peace officers acting on the direction of court staff without leave of a judge; and to prohibit Mr. Lindsay from attending at the offices of the Provincial Court except in certain conditions. Macinnes J. reviewed the court's power to punish, by contempt of court proceedings, those who interfere with the due administration of justice, and then granted the injunction. He observed:

> As for the Crown's application for an injunction, the same is granted. On the material before me, there is a strong prima facie case and/or serious question to be tried. There is clearly irreparable harm suffered by the individuals who have been subjected to the defendant's conduct and if left unchecked, to the justice system itself. Further, the balance of convenience clearly favours the plaintiff.
>
> If the defendant's conduct were permitted to continue unchecked to its logical conclusion, and if other citizens were to follow the lead of the defendant and act in a similar manner, the combined effect of such conduct could bog down the justice system to the point of seriously reducing access to the courts by litigants and/or creating gridlock. While I appreciate that has, in fact, existed in this case on the evidence is a great distance from creating systemic gridlock, the point remains that the process is there and available, and intended for any citizen of this country acting in a bona fide manner. It is not, and never has been, intended to be or become a tool of oppression. What we see on the evidence is a wrongheaded, destructive, malicious use of the justice system by the defendant to effect a purpose which is the very antithesis of that which the section intends. Defendant's conduct brings the justice system into disrepute. That clearly constitutes irreparable harm, including to the plaintiff as superintendent of the justice system. [paras. 29-30]

[10] Further, there is evidence that Mr. Lindsay has, in this province, been advertising himself as an expert on legal matters or permitting others to do so on his behalf. In advance of a recent "seminar" that he instructed, he was described in an Internet notice (essentially promotional material for the seminar) as "Canada's foremost freedom expert on the secrets of laying criminal charges against government officials." The notice continued:

> Dave will examine some of the common law, principles and obligations as well as some of the rights and freedoms we have there under. Included will be answers to pertinent and repeatedly asked questions involving our RIGHT to use the highways, how this right has been denied to us, how the courts have self-admittedly been a part of this fraud, what happens with insurance, and how the Charter of Rights and Freedoms does not protect you.
>
> You will learn how the criminal process works, Dave will be explain [sic] how one can lay their own private criminal charges against anyone in the country, including government ministers, CCRA and other government officials, and even police officers. . . .

[11] According to other material published on the Internet, Mr. Lindsay has also negotiated an "exclusive agreement" with a publisher:

> . . . to work with our subscribers as a court procedure assistant. Whether it means getting help in drafting up court documents correctly, how to lay charges against government agents or how to deal with your own lawyer more effectively, Lindsay has the solution. . . .
>
> Lindsay has been involved in court procedures literally hundreds of times, for both defendant and plaintiff's challenges, or for filing court documents on their behalf. Lindsay is not a "lawyer" but has the ability to act as an "agent" for anyone who has to go to court and wishes to do so without spending a fortune on lawyer fees.
>
> We have arranged to make Lindsay available for one-on-one telephone assistance to any Canadian who needs help with court challenges or wishes to learn how to deal with court challenges for their own benefit.

[12] Mr. Lindsay advanced several arguments in response to the Crown's objection. First, he contended that since the Provincial Court judge had, for considered reasons, ruled that he should be permitted to appear in that court, that ruling should apply "through the whole summary conviction process" including all appeals. However, the appeal before us is an appeal from an order of *certiorari* made by Dohm, A.C.J., not a direct appeal from the order of the Provincial Court judge. More importantly, the cases are clear that an order of a lower court permitting him to appear would not bind this Court in any event. As was noted by the Ontario Court of Appeal in ***R. v. Duggan*** (1976), 31 C.C.C. (2d) 167:

> To allow an accused to be represented before the appeal Court by an agent is inconsistent with [then s. 735(2) of the ***Criminal Code***; see now s. 800(2)], as the appeal Court is clearly a different Court statutorily, constitutionally and historically from a summary conviction Court. More importantly the terms of ss. 735(2) and 737(2) [see now ss. 800(2) and

> 802(2)] cannot be made to apply *mutatis mutandis* to the appeal proceedings. It is more than "a point of detail" that is affected if s. 755(1) is interpreted as giving the right to agents to represent accused before County Courts or Supreme Courts on appeals by way of trial *de novo*. To make the necessary changes and have the section applied in such appeal proceedings immediately bring them into conflict with or limits competent provincial legislation. Such a conflict or exception should not be brought about by implication or inference. [at 169]

Accordingly, we do not agree that s. 800 of the ***Criminal Code*** applies to require this Court to permit an agent to appear for a litigant or an accused, whether on a direct appeal from a summary conviction or otherwise.

[13] Second, Mr. Lindsay says that he has not had an opportunity to "present a defence" - i.e., defend the legality of the subpoenas - in Supreme Court because he received the Crown's submissions only two or three days prior to the hearing before Dohm, A.C.J. Bearing in mind also that the Associate Chief Justice quashed the subpoenas on the basis that the Provincial Court had "no jurisdiction" to make the orders it did - a ruling Mr. Lindsay equates to a ruling on the merits of Mr. Dick's defence - he says that when the hearing resumes in Provincial Court next month, there will be "no evidence" for Mr. Dick to place before the Court and Mr. Dick will not have had the opportunity to make full answer and defence.

[14] With respect, we do not read Dohm, A.C.J.'s brief reasons as constituting a conclusion on the legal merits of Mr. Dick's constitutional arguments. It is still open for Mr. Dick to make his arguments before the Provincial Court judge, although he may not have available to him all the evidence he had hoped for. In saying this, we should not be taken as making any comment on the argument that will ultimately be made in this Court when the within appeal is heard. It may be that Mr. Dick, or the Crown, will wish to apply for an adjournment of the trial in Provincial Court pending the disposition of this appeal, but that question is not before us.

[15] Finally, Mr. Lindsay says that no "complaints" about his conduct have been made by British Columbia courts and that the Law Society of British Columbia has not "charged" him with the unauthorized practice of law, contrary to the ***Legal Profession Act***, S.B.C. 1998, c. 9. He notes that the Provincial Court judge was quite content to hear him, that the transcript does not disclose any "disrespectful" comments on his part, and that he (Mr. Lindsay) does "quality work". If Mr. Lindsay were not permitted to continue, he says, Mr. Dick, who cannot afford a lawyer, would be unable to defend himself because he does not have the skills and knowledge Mr. Lindsay does.

[16] It is precisely because of Mr. Dick's circumstances that it is all the more important he be represented by counsel who is competent and who is unlikely to engage in abusive or vexatious conduct before the court. Mr. Lindsay has engaged in such conduct in the past, and there is no reason to think he will not run true to form in this province. Indeed, the written comments he has made to friends (which he says were put on the Internet by

someone else) concerning his hearing before Dohm, A.C.J., show that his attitude is anything but "respectful" as he claims. Whether the published comments amount to contempt is also a matter not before us.

[17] A review of all the evidence leaves little doubt that Mr. Lindsay should not be given the privilege of appearing as an agent on behalf of a person charged with an offence, such as Mr. Dick. We therefore order that the Crown's objection is sustained. Mr. Dick may of course proceed with the substantive appeal, subject to his filing in this Court a Notice of Appeal signed by himself or a solicitor acting on his behalf.

[18] The balance of the argument before us concerned whether or not Mr. Lindsay is receiving fees or benefits for his services and therefore engaging in the unauthorized practice of law. We do not find it necessary or appropriate to express any opinion in this proceeding on that issue.

"The Honourable Madam Justice Newbury"

"The Honourable Madam Justice Huddart"

"The Honourable Mr. Justice Mackenzie"


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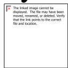
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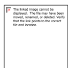
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