

CANADA / JUDGMENT

Bryfogle (Re)

2025 BCCA 63

COURT

British Columbia Court of Appeal

DECIDED

7 March 2025

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2025 BCCA 63 Bryfogle (Re) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Bryfogle (Re), 2025 BCCA 63 Date: 20250307 Docket: CA50162 In the matter of an appeal from an order dismissing Charles Bryfogle's application to initiate proceedings Before: The Honourable Madam Justice Fenlon The Honourable Mr. Justice Grauer The Honourable Justice Riley On appeal from: An order of the Supreme Court of British Columbia, dated September 3, 2024, dismissing Charles Bryfogle's application to initiate proceedings (In the matter of Screening Proceedings Charles Bryfogle Seeks to Initiate, 2024 BCSC 1621, Kamloops Docket 114811). The Appellant, on his own behalf: C. Bryfogle Written Submissions Received by the Appellant: November 26, 2024 January 31, 2025 Place and Date of Judgment: Vancouver, British Columbia March 7, 2025 Written Reasons of the Court Summary: Summary dismissal of an appeal from an order denying the appellant leave to commence legal proceedings. The appellant has been declared a vexatious litigant and requires leave to commence legal proceedings. The appellant sought an order permitting him to prefer direct indictments in order to privately prosecute a number of Crown counsel and public figures. The Associate Chief Justice dismissed his applications. Held: Appeal quashed. This Court does not have jurisdiction to hear an appeal from a decision to refuse an order sought under section 577(b) of the Criminal Code, as the Criminal Code does not provide for such an appeal. Reasons for Judgment of the Court:

- [1] This appeal has been referred to a division of the Court to consider whether it should be dismissed summarily, without a full hearing, pursuant to s. 685(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code]: Summary determination of frivolous appeals 685(1) Where it appears to the registrar that a notice of appeal, which purports to be on a ground of appeal that involves a question of law alone, does not show a substantial ground of appeal, the registrar may refer the appeal to the court of appeal for summary determination, and, where an appeal is referred under this section, the court of appeal may, if it considers that the appeal is frivolous or vexatious and can be determined without being adjourned for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the respondent on the hearing. The appellant, Charles Bryfogle, was invited to provide written submissions to the Court, which we have received and considered.

Background

- [2] Mr. Bryfogle has for many years been a frequent litigant in the courts of British Columbia. He has consumed inordinate amounts of court time on matters that have been found to be frivolous and vexatious. As a result, he has been declared a vexatious litigant and is not permitted to initiate legal proceedings, whether civil or criminal, in any court without leave: 2024 BCSC 1621.
- [3] The events giving rise to this appeal began in July 2016 when Associate Chief Justice Cullen found Mr. Bryfogle to be in contempt of an order enjoining him from providing legal services: *Law Society of British Columbia v. Bryfogle*, 2016 BCSC 2188. Further criminal proceedings were brought against Mr. Bryfogle in 2018 for breaching a term of the probation order imposed as part of Mr. Bryfogle's sentence for the contempt. He was convicted of that breach in provincial court, and his summary conviction appeal to the BCSC was dismissed: *R v. Bryfogle*, 2024 BCSC 643. Mr. Bryfogle then applied for leave to appeal to this Court. Leave was denied on January 10, 2025.
- [4] The appeal before us concerns Mr. Bryfogle's attempt to have charges laid against public officials he claims committed offences while carrying out their roles in the investigation and prosecution of the breach of probation charges brought against him, including his summary conviction appeal. Those individuals include former Attorney General David Eby, current Attorney General Niki Sharma, four provincial Crown counsel, one federal Crown counsel, and two individuals said to have been RCMP officers during the relevant period.
- [5] Mr. Bryfogle applied to the BC Supreme Court for an order under s. 577(b) of the Criminal Code permitting him to prefer 14 separate direct indictments to enable him to privately prosecute these individuals. That section provides as follows: 577 Despite section 574, an indictment may be preferred even if the accused has not been given the opportunity to request a preliminary inquiry, a preliminary inquiry has been commenced but not concluded or a preliminary inquiry has been held and the accused has been discharged, if
- (a) in the case of a prosecution conducted by the Attorney General or one in which the Attorney General intervenes, the personal consent in writing of the Attorney General or Deputy Attorney General is filed in court; or
 - (b) in any other case, a judge of the court so orders.
- [6] Mr. Bryfogle also sought "774 Mandamus Relief" in the form of various orders against an individual Crown counsel and the Attorney General of British Columbia. This claim was evidently directed toward the conduct of the Attorney General and the Crown in staying prosecutions Mr. Bryfogle had commenced by way of private information in the Provincial Court.

- [7] In thorough reasons delivered on September 3, 2024, Associate Chief Justice Holmes dismissed both applications: 2024 BCSC 1621. Because Mr. Bryfogle has been declared a vexatious litigant, and cannot file applications without leave of the court, the Associate Chief Justice's orders were framed as denials of Mr. Bryfogle's request for leave to file the applications. However, Associate Chief Justice Holmes fully considered and addressed the substantive applications and dismissed them on their merits.
- [8] Mr. Bryfogle appeals only the order refusing approval of the proposed direct indictments. With regard to the "mandamus relief" referred to in Mr. Bryfogle's application materials before the Associate Chief Justice, Mr. Bryfogle's Notice of Appeal asserts, "Mandamus [was] never in issue before ACJ Holmes."

Analysis

- [9] Little needs to be said in considering whether the appeal should be dismissed. This Court's jurisdiction is limited by statute. Put another way, this Court can only hear an appeal if a statute grants the Court authority to do so. The Criminal Code does not provide for an appeal from a decision to grant or refuse orders sought under s. 577(b). It follows that this Court does not have authority to hear an appeal from Associate Chief Justice Holmes' order dismissing Mr. Bryfogle's s. 577(b) applications. The appeal is therefore a nullity and must be quashed for want of jurisdiction.

Disposition

- [10] The appeal is quashed. "The Honourable Madam Justice Fenlon" "The Honourable Mr. Justice Grauer" "The Honourable Justice Riley"

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