

CANADA / JUDGMENT

R. v. Sharpe

2002 BCSC 44

COURT

Supreme Court of British Columbia

DECIDED

11 January 2002

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2002BCSC0044

Citation: R. v. Sharpe

Date: 20020111
2002 BCSC 44Docket: X050427
Registry: VANCOUVER
IN THE SUPREME COURT OF BRITISH COLUMBIA
REGINA
AGAINST
JOHN ROBIN SHARPEAND: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
APPLICANT

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE SHAW Counsel for the Crown: T. Schultes M. Wray Counsel for the Accused: P. Burstein Counsel for the Applicant: G. Barriere
Date and Place of Hearing: January 10, 2002 Vancouver, BC

- [1] The accused John Robin Sharpe is facing four charges under the child pornography provisions of the Criminal Code. The trial is due to commence on January 21, 2002.
- [2] The applicant, British Columbia Civil Liberties Association (BCCLA) has applied for intervener status at the trial for the sole purpose of making submissions on the issue of artistic merit. At issue in this regard will be some written materials which the Crown alleges were in the possession of Mr. Sharpe.
- [3] Counsel for the BCCLA contends that the issue of artistic merit may have broad implications for writers and that permission to make submissions on that issue is therefore warranted.

- [4] The Crown opposes BCCLA's application. The Crown contends that such applications are rarely allowed at the trial level in criminal cases and that where trial courts have granted intervener status, it has been where constitutional points were in issue.
- [5] In *R. v. Seaboyer and Gayme* (1986), 50 C.R. (3d) 395 at 398 (Ont. C.A.) Howland C.J.O. said: The right to intervene in criminal cases where the liberty of the subject is involved is one which should be granted sparingly.
- [6] In *R. v. Alfred*, [1993] B.C.J. No. 2277 (S.C.), Ryan J. (as she then was) on a summary conviction appeal said, at paras. 27 and 28: In *Can.(A.G.) v. Aluminum of Can.* 1987, 10 B.C.L.R. (2d) 371 Seaton J.A. said this at page 385: Interveners should not be permitted to take the litigation away from those directly affected by it. Parties to litigation should be allowed to define the issues and seek resolution of matters they determine appropriate to place in issue. They should not be compelled to deal with issues raised by others. This is particularly the case in criminal proceedings.
- [7] In *Re Duncan and the Queen* (1991), 65 C.C.C. (3d) 546 (C.A.); leave to appeal to S.C.C. refused 102 C.C.C. (3d) vi, Prowse J.A. described the power to grant intervener status in criminal trials as a procedure ". . . which, on its face, is antithetical to the notion of a criminal trial as a process involving only two parties - the Crown and the accused."
- [8] In the present case, a considerable amount of assistance has been provided by the Supreme Court of Canada in *R. v. Sharpe* (2001), 150 C.C.C. (3d) 321 (S.C.C.) on the subject of artistic merit. McLachlin C.J.C. speaking for the majority, devoted paras 61 to 67 to this subject. Her observations will no doubt play a significant role in how I assess the evidence to be put before the court during the trial.
- [9] At the trial, Mr. Sharpe will be represented by experienced counsel. So will Crown.
- [10] In dealing with the defence of artistic merit, the constitutionality of that defence does not arise. The factors to be taken into account in assessing artistic merit may well be developed on a case by case basis. The BCCLA offers its assistance in that development. However, as I pointed out during the course of BCCLA's submission, if I grant intervener status for the purpose of this trial, there will be little reason why it should not be granted for all criminal trials where artistic merit may be a defence. Also, there may well be interest groups whose objectives differ from those of the BCCLA who may wish to become involved as well.
- [11] In my view, I should follow the jurisprudence that intervention in criminal trials where the liberty of the subject is involved should only be granted sparingly. In final analysis, the defence of artistic merit in the present case will come down to an assessment of the particular facts of the case. With the assistance of Crown counsel and defence counsel, as well as the observations of the Supreme Court of Canada which I referred to above, I am of the view that it is best to leave the handling of this case at trial level to the parties directly affected by it, the Crown and Mr. Sharpe.

[12] Accordingly, I deny BCCLA's application. "D.W. Shaw, J." The Honourable Mr. Justice D.W. Shaw

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Prepared on 27 October 2026 · Esheria