

CANADA / JUDGMENT

R. v. Wucherer

2005 BCCA 336

COURT

British Columbia Court of Appeal

DECIDED

9 June 2005

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2005 BCCA 336 R. v. Wucherer COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Wucherer, 2005 BCCA 336 Date: 20050609 Docket: CA031547 Between: Regina Respondent And Paul Wucherer Applicant Before: The Honourable Mr. Justice Mackenzie The Honourable Mr. Justice Low The Honourable Mr. Justice Thackray Oral Reasons for Judgment S. Goldberg Counsel for the Appellant S.J. Brown Counsel for the Respondent S.J. Martorana Counsel for the Attorney General of British Columbia V. Shillington Counsel for the Intervenor Margaret Armstrong Place and Date: Vancouver, British Columbia 9 June 2005

- [1] MACKENZIE J.A.: The appellant has applied to raise a constitutional issue, namely that the victim surcharge levy under s. 8.1, s. 3, and s. 9.4(a) of the Victims of Crime Act, R.S.B.C. 1996, c. 478 are unconstitutional, a violation the rights of the appellant under the Charter of Rights and Freedom,
- [2] The Attorney General raises a preliminary objection to the issue being raised on several grounds including the submission that the appellant's argument was not raised at trial and cannot be raised for the first time on appeal. In that respect the Attorney General relies on a number of authorities including the decision of this Court in R. v. Ubhi (1996) 81 B.C.A.C. 161, B.C.J. No. 934.
- [3] The Attorney General also submits that there is no evidence that the Victims of Crime Act applies in these proceedings. There was no foundation for the constitutional issue developed at the trial. In my view, it is clear that the victim surcharge levy imposed by s. 8.1 of the statute is a levy that applies to provincial offences only and has no application to the offence here which is under the Criminal Code of Canada.
- [4] In my view, these objections are fatal to the application and accordingly I would dismiss it.
- [5] LOW J.A.: I agree.
- [6] THACKRAY J.A.: I agree. "The Honourable Mr. Justice Mackenzie"

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