

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Bevis v. Burns*, 2005 NSCA 160

**Date:** 20051208

**Docket:** CA 234852

**Registry:** Halifax

**Between:**

Kerry C. Bevis

Applicant

v.

Constable Rick Burns,  
Constable Bob Kelly and ATV/CTV

Respondents

**Judge:** The Honourable Justice Jill Hamilton

**Application Heard:** December 1, 2005, in Halifax, Nova Scotia, in Chambers

**Held:** Application for an extension of time to file limited appeal book and factum granted. Application to dismiss appeal against ATV/CTV granted.

**Counsel:** Kerry C. Bevis, self-represented appellant  
James Boudreau & Lindsay Jardine, Articled Clerk, for  
the respondent ATV/CTV  
Lori Rasmussen, for the respondents, Burns & Kelly  
Walter Thompson, Q.C., for Rasim Karela

**Decision:**

[1] There are two applications before me. ATV/CTV applied to dismiss Mr. Bevis' appeal for non-perfection. Mr. Bevis, a self-represented litigant, applied for an indefinite extension of time to file his appeal book containing a complete transcript and his factum. Following the Chambers hearing he wrote requesting an extension of time to file a limited appeal book and factum, if I was not prepared to grant him an indefinite extension to allow him to obtain a complete transcript.

[2] Mr. Bevis' November 17, 2005 affidavit in support of his application indicates he received the tapes of his trial from the court, that he cannot afford to have them transcribed by a certified transcribing service, that he listened to the tapes himself and that the evidence of four witnesses (Mr. Karela, Mr. Carver, Mr. Yeomans and Constable Kelly) on a particular point was missing and that he obtained a second copy of the tapes from the court, listened to them and the evidence is still missing from the second tapes. He seeks an opportunity to listen to the original recording of the trial hoping he will find the evidence he alleges has been omitted from the tapes. In Chambers Mr. Bevis accused court staff of intentionally altering the evidence of these four witnesses on the tapes that were provided to him - twice.

[3] The lower court decision and order Mr. Bevis has appealed are dated September 29, 2004. There are two outstanding appeals from this order, Mr. Bevis' and Rasim Karela's, CA 234039. Mr. Bevis filed an application to extend time to file his notice of appeal on November 10, 2004. This extension was granted on November 18, 2004, in Chambers. His notice of appeal was filed November 30, 2004. When the parties to both appeals appeared in Chambers on January 20, 2005, to have dates set for the hearing of the appeals, the setting of dates was adjourned because counsel in Mr. Karela's appeal were attempting to agree on what portions of the trial transcript would be included in their appeal book in light of the grounds of appeal raised in Mr. Karela's appeal. It was felt both appeals should be heard together.

[4] Both appeals returned to Chambers before me on August 4, 2005, on a Registrar's motion for dismissal. Mr. Bevis applied for an extension of time to file his appeal book and factum indicating he did not have the money to pay for the transcript of the full trial which he wanted. Counsel in Mr. Karela's appeal

indicated they were ready to proceed and would like to have dates set for the hearing of Mr. Karela's appeal.

[5] On August 5, 2005, I set the dates for Mr. Karela's appeal to be heard sufficiently far into the future, February 16, 2006, to allow Mr. Bevis more time to find the money to have the transcript prepared, so that his appeal book and factum could be filed and the two appeals could proceed to be heard together.

[6] I also ordered that Mr. Bevis would have until 4:00 p.m. on November 15, 2005 to file his appeal book, including the transcript, and to apply to Chambers to set down his appeal in its present form to be heard at the same time as Mr. Karela's appeal. If he was not able to obtain a transcript and proceed with his appeal in its present form, I ordered that he had until 4:00 p.m. on November 15, 2005, to apply to Chambers to amend his notice of appeal to restrict the grounds to those issues that are similar to the grounds in Mr. Karela's appeal and have his appeal set down to be heard with Mr. Karela's appeal on February 16, 2006. He could have done this with the transcript prepared in Mr. Karela's appeal which had been offered to him. I ordered that if Mr. Bevis did not take such steps by 4:00 p.m. on November 15, 2005, the respondents could apply *ex parte* to have his appeal dismissed, as CTV/ATV has done.

[7] Following November 15, 2005, both applications now before me, were filed.

[8] Mr. Bevis indicated in Chambers that he did not want a transcript of the tapes that have been provided to him because he alleges they are incomplete. Mr. Bevis has not satisfied me that the tapes provided to him - twice - were altered by court staff as he suggests. Mr. Bevis confirmed in Chambers that he did not wish to amend his notice of appeal to restrict his appeal to grounds that are similar to those in Mr. Karela's appeal, for which the transcript is available, and proceed on that basis on February 16, 2006.

[9] As indicated above however, following his appearance in Chambers, Mr. Bevis sent a fax which I interpreted to mean that if I am not prepared to give him an indefinite adjournment to find the evidence he alleges is missing from the tapes and have it transcribed, that he would now like to amend his notice of appeal to correspond with the notice of appeal in Mr. Karela's appeal and rely on the appeal

book and factum filed in that appeal and have his appeal set down to be heard on February 16, 2006 along with Mr. Karela's appeal.

[10] It has now been over one year since Mr. Bevis filed his notice of appeal. If Mr. Bevis will not accept the accuracy of the evidence on the tapes he has been provided with, I see no way that his appeal as it is affects ATV/CTV can proceed.

[11] ATV/CTV has been living with this appeal for over one year and wants to have it brought to a conclusion.

[12] I dismiss Mr. Bevis' appeal against ATV/CTV.

[13] Counsel for Constables Rick Burns and Bob Kelly has no objection to Mr. Bevis proceeding with his appeal on the basis of the appeal book and appellant's factum filed in Mr. Karela's appeal. Counsel for Mr. Karela also agrees.

[14] Mr. Bevis shall have until 4 p.m. on Monday, December 19, 2005 to file an amended notice of appeal containing the same grounds of appeal as those contained in Mr. Karela's notice of appeal. If he does not do so, Constables Burns and Kelly may apply *ex parte* to have his appeal dismissed. If he does file an amended notice of appeal by the time set out above, the appeal book and appellant's factum filed in Mr. Karela's appeal shall be deemed to be filed with respect to Mr. Bevis' appeal also without the need for any further filings. If Mr. Bevis wishes to provide any additional argument on these restricted grounds of appeal, he must file five copies of his factum with the court and provide a copy of same to counsel for Constables Burns and Kelly and counsel for Mr. Karela on or before 4:00 p.m., December 19, 2005.

[15] Mr. Bevis' appeal will be heard together with Mr. Karela's appeal commencing at 10 a.m. on February 16, 2006 for the full day.

Hamilton, J.A.