NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Levy*, 2024 NSCA 47

Date: 20240417
Docket: CAC 522594
Registry: Halifax

Between:

Brian Merrill Levy

Appellant

v.

His Majesty the King

Respondent

Judge:	The Honourable Justice Elizabeth Van den Eynden
Appeal Heard:	January 23, 2024, in Halifax, Nova Scotia
Subject:	Section 839 *Criminal Code* appeal, fresh evidence motion, application for leave to appeal
Summary:	The appellant's dogs were seized and he was convicted of two summary conviction offences under the *Animal Protection Act*. His appeal to the Summary Conviction Appeal Court (SCAC) was unsuccessful. The appellant seeks leave to appeal the decision of the SCAC judge and to adduce fresh evidence on appeal.
Issues:	(1) Should the fresh evidence be admitted? (2) Should leave to appeal be granted?
Result:	Motion to adduce fresh evidence on appeal dismissed for failure to meet admissibility requirements. Leave to appeal denied because no legal issue important to the administration of justice raised; record did not reveal any error of law, nor was there a significant deprivation of appellant's liberty.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 34 paragraphs.

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Respondent

Judges:	Bourgeois, Beaton, Van den Eynden, JJ.A.
Appeal Heard:	January 23, 2024, in Halifax, Nova Scotia
Held:	Motion for fresh evidence dismissed, application for leave to appeal denied, per reasons for judgment of Van den Eynden, J.A.; Bourgeois and Beaton, JJ.A., concurring
Counsel:	Brian Merrill Levy, appellant in person Timothy O'Leary, for the respondent

Reasons for judgment:

Introduction

[1] Mr. Levy's dogs were seized by animal protection officials and he was convicted of two summary conviction offences under the *Animal Protection Act*[1]:

> (1) Violating standards of care prescribed by the *Standards of Care for Cats and Dogs Regulations*[2], concerning shelter height, tethering time and tether length, thereby permitting dogs to be in distress, contrary to s. 21(2) of the *Act*; and
> (2) Failing to provide a dog (puppy) with adequate medical attention when the animal was wounded or ill; contrary to s. 22 (b) of the *Act*.

[2] Judge Mark C. Chisholm of the Nova Scotia Provincial Court presided over Mr. Levy's trial. After finding Mr. Levy guilty of these offences, the judge imposed a sentence comprised of:

> (1) A fine for each offence ($300 plus a $45 surcharge for the s. 21(2) offence and $500 plus a $75 surcharge for the s. 22(b) offence); and
> (2) A five-year order prohibiting Mr. Levy from having custody, care, or control of any animals for a period of five years subject to the following exception:
>
> > (i) Mr. Levy can, subject to conditions, have custody of up to two dogs for the purpose of companionship. Conditions imposed included a prohibition on breeding, spay and/or neuter stipulations, and other provisions to protect the health and welfare of any dog.

Judge Chisholm's decisions on conviction and sentence were delivered orally and remain unreported.

[3] Mr. Levy appealed his convictions and sentence to the Nova Scotia Supreme Court. Justice Gail L. Gatchalian, sitting as a Justice of the Summary Conviction Appeal Court (SCAC), heard and dismissed Mr. Levy's appeal. Her decision is reported as 2023 NSSC 23.

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[1] S.N.S. 2008 c. 33. The offence dates were between October 22, 2018 and January 14, 2019. The *Animal Protection Act* S.N.S. 2008 c. 33 was repealed on November 12, 2019 and a new version of the *Act* came into force, S.N.S. 2018 c. 21; however, this has no bearing on the matter.
[2] N.S. Reg 182/2014.

[4] Mr. Levy now appeals the decision of the SCAC to this Court pursuant to s. 839 of the *Criminal Code*[3]. A s. 839 appeal is restricted to a question of law alone and requires leave of this Court. Mr. Levy also seeks to introduce fresh evidence on appeal.

[5] For the following reasons, I would dismiss the motion for fresh evidence and deny leave to appeal.

Background

[6] As this is an appeal of Justice Gatchalian's (SCAC judge) decision, I will summarize the issues she was asked to grapple with and her reasons for dismissing Mr. Levy's appeal.

[7] The SCAC judge set out the matter before her:

> [3] Mr. Levy has appealed his conviction and the prohibition order.
>
> [4] In his Factum and in oral argument, Mr. Levy admitted that he violated the regulatory standards prescribing minimum shelter height, maximum tethering time and minimum tether length, but questioned the validity of the regulations themselves, given that there was no evidence of actual distress. Mr. Levy did not challenge the validity of regulations at trial. He did not properly challenge their validity in this appeal. His argument is, essentially, that he does not agree with the *Regulations*. His appeal of his conviction for breaching the *Regulations* on the ground that the *Regulations* are invalid is dismissed.
>
> [5] Mr. Levy appears to raise one issue of fact concerning his conviction for breaching the *Regulations*, and that is whether the trial judge erred in rejecting his due diligence defence with respect to minimum tether length. I will address this issue in my decision.
>
> [6] Mr. Levy's appeal of his conviction under s. 22(b) of the *Act* is also based on alleged errors of fact.
>
> [7] The Crown assumed, as will I, that Mr. Levy's grounds of appeal are as follows:
>
> > (a) that the trial judge misapprehended the evidence, resulting in a miscarriage of justice; and
> >
> > (b) that the trial judge rendered an unreasonable verdict or a verdict that cannot be supported by the evidence.

[3] R.S.C. 1985, c. C-46

> [8] With respect to the conviction for failing to ensure that the tethers he used met the minimum length requirement, Mr. Levy says that he had corrected the length of some tethers, and that he planned to correct the length of other tethers once the ground thawed and he was able to drive new pivots.
>
> [9] With respect to the conviction for failing to provide adequate medical care to the puppy, Mr. Levy says that:
>
> > (a) the puppy healed without surgery, showing that it did not need medical attention;
> >
> > (b) the trial judge accepted the opinion of a veterinarian that the puppy required medical attention for its injuries when the veterinarian was mistaken about the timing of the injuries;
> >
> > (c) Mr. Levy's evidence that dog saliva has antibacterial, cleansing and healing properties should have been preferred over the evidence of the two veterinarians called by the Crown; and
> >
> > (d) Mr. Levy was exercising due diligence by monitoring the puppy's wounds.

[8] After setting out the correct legal principles, including the standard of review to be applied, and reviewing the record before her, the SCAC judge rejected Mr. Levy's complaints of error. In her decision, the SCAC judge explained:

> [21] Judge Chisholm did not misapprehend the evidence relevant to Mr. Levy's assertion that he acted with due diligence to correct his violation of the regulatory requirement that, if he was going to use tethers, they had to be a certain minimum length. Judge Chisholm did not fail to consider evidence relevant to this issue, make a mistake as to the substance of the evidence, or fail to give proper effect to evidence. He explicitly considered Mr. Levy's evidence that he planned to correct his violation in the spring, and rejected his explanation as demonstrating due diligence. In addition, the evidence was reasonably capable of supporting Judge Chisholm's conclusion that Mr. Levy had not exercised due diligence in correcting his violation of the *Regulations* regarding tether length.
>
> …
>
> [35] Judge Chisholm did not misapprehend the evidence when he concluded that the puppy required medical attention for the wounds, despite the fact that the puppy healed without surgery.
>
> …
>
> [39] In concluding that the puppy required medical attention, Judge Chisholm did not fail to consider evidence relevant to a material issue, make a mistake as to the substance of the evidence, or fail to give proper effect to evidence. Nor did he render an unreasonable verdict. In addition, the evidence of the nature of the wounds and the evidence of the veterinarians is reasonably capable of supporting

his conclusion that the Crown had proved, beyond a reasonable doubt, that Mr. Levy failed to provide the puppy with adequate medical attention contrary to s. 22(b) of the Act.

…

[41] In my view, Judge Chisholm's reference to Dr. MacKenzie's opinion that the injuries had existed for at least a week, goes to the details of his decision, rather than to the substance of it. In other words, Judge Chisholm's reference to the timing of the injuries is peripheral to his reasoning, rather than material to it.

[42] Furthermore, the timing of the wounds did not play an essential part in Judge Chisholm's reasoning process resulting in the conviction.

…

[46] The error alleged by Mr. Levy – that Judge Chisholm found that the wounds were at least a week old – does not go to the substance of material parts of the evidence that bears on an essential part of the reasoning process leading to the conviction. See *Lohrer, supra* at para. 9. Judge Chisholm did not err in his appreciation of the evidence in a manner that could have affected the outcome: see *Lohrer, supra* at para. 10.

[47] In addition, the evidence relied on by Judge Chisholm for his verdict – the nature of the injuries and the opinions of the veterinarians - is reasonably capable of supporting his conclusion that Mr. Levy failed to provide the puppy with adequate medical attention.

[48] Judge Chisholm was entitled to reject Mr. Levy's assertion that dog saliva does (sic) have antibacterial properties. Mr. Levy provided no support at trial, beyond his subjective opinion, of this proposition. Mr. Levy did not succeed in having the veterinarians agree with his suggestion that dog saliva has healing and antibacterial properties. Judge Chisholm did not misapprehend the evidence. Moreover, the evidence is reasonably capable of supporting Judge Chisholm's conclusion that Mr. Levy failed to provide the puppy with adequate medical attention by monitoring the puppy and allowing it to lick its wounds.

[49] Judge Chisholm's conclusion that Mr. Levy had not exercised due diligence was firmly grounded in the evidence. The two cuts on the puppy's legs were severe, nasty. They were deep, almost to the bone. Both veterinarians agreed that the puppy required medical attention. Both prescribed antibiotic and anti-inflammatory medication. Both agreed that the puppy would not have healed without medical intervention. Despite the severity of the wounds, Mr. Levy took no steps to address the injury or to seek medical attention. Mr. Levy provided no support for his contention that allowing the puppy to lick the wounds was reasonable because dog saliva has healing properties.

[50] Judge Chisholm did not misapprehend the evidence when he rejected Mr. Levy's due diligence defence. Additionally, the evidence is reasonably capable of

> supporting Judge Chisholm's conclusion [that] Mr. Levy's decision to "monitor" the puppy did not constitute due diligence.

[9] As to Mr. Levy's appeal against sentence, the SCAC judge reasoned:

> [52] Section 7 of the *Summary Proceedings Act*, … incorporates the general sentencing principles found in ss. 718, 718.1 and 718.2 of the *Criminal Code*.
>
> [53] In animal welfare regulatory offences, courts have said that the primary sentencing objectives are denunciation, deterrence and rehabilitation: (citations omitted).
>
> [54] The [*Animal Protection Act*] explicitly granted Judge Chisholm the authority to make the prohibition order. Under s. 35(1A) of the *Act*, where a person is found guilty of an offence under the *Act* or the *Regulations*, the judge may make an order requiring the person to comply with such conditions as the judge considers appropriate and just in the circumstances for securing the person's good conduct and for preventing the person from repeating the same offence or committing other offences. Under s. 35(2) of the *Act*, the judge may make an order restraining the person from having custody, care or control of animals for such period of time as is specified by the court.
>
> [55] In sentencing Mr. Levy, Judge Chisholm explicitly recognized that, in determining an appropriate sentence, he was required to consider the nature of the offences and the circumstances of the individual, and to impose a sentence that was appropriate to the offence and the offender. …
>
> …
>
> [59] The sentence, including the prohibition order, served the principles of denunciation and deterrence, as well as the principle of rehabilitation. Judge Chisholm imposed fines, but exercised restraint given Mr. Levy's individual circumstances. He imposed the conditional prohibition order because he found that Mr. Levy was in need of deterrence given his strong views, but allowed him to keep up to two dogs for companionship and limited the order to five years instead of ten, consistent with the principle of rehabilitation.
>
> [60] Judge Chisholm's sentence is not demonstrably unfit. Judge Chisholm did not make an error in principle, for example, by committing an error of law, failing to consider a relevant factor, or erroneously considering an aggravating or mitigating factor.

[10] On appeal to this Court, it appears from Mr. Levy's submissions that his primary objective is to overturn the convictions, as he did not directly focus on the sentence imposed.

[11] Should leave to appeal be granted, Mr. Levy set out these grounds in his Notice of Appeal:

> It is alleged that this miscarriage of justice occurred because:
>
> 1. … His Honor, Marc C. Chisholm made a decision with regard to the date of the injury which was not supported by the evidence. … Justice …Gatchalian recognized this misapprehension of fact but judged that in her "opinion", it did not rise to significance. The Appellant respectfully disagrees.
>
> 2. Both His Honor of the lower Court and Her Honor of the Supreme Court did not recognize and/or review the content of a published scientific paper containing critical evidence that supported the correctness and wisdom of the actions of the Appellant with respect to the care of his puppy.
>
> Both Justices spoke of such document as non existent. However, the document in question is part of the material of evidence provided to the Court by the Defendent/Appellant and can be found in the court record.
>
> 3. Both [Judge Chisholm] of the lower Court and Her Honor Justice Gatchalian of the Supreme Court ... in her quest for DEFFERENCE to the lower Court, applied and/or accepted unsupported "conjecture" in their reasoning leading to their finding of Mr. Levy's guilt. The Honorable Justices applied unjustifiable selection of only the evidence and testimony that appeared to support what is allegedly their incorrect decision of Mr. Levy's guilt. Evidence that existed, but was counter to their conjectured opinion, was ignored.
>
> Mr. Levy respectfully requests of the Appeal Court of Nova Scotia, the opportunity to present for the Court's review, the evidence which supports his claims.

[12] The underlined portion above pertains to Mr. Levy's fresh evidence motion.

[13] In its factum, the Crown succinctly and fairly reframed the substance of Mr. Levy's complaints:

> 75. To hopefully assist the Court in resolving this Summary Conviction Appeal, I will state the issue in the following way: Did the SCAJ commit a legal error by finding the Trial Judge did not misapprehend the evidence or reach an unreasonable verdict?

[14] Next, I turn to Mr. Levy's motion for fresh evidence.

Motion for fresh evidence

[15] The framework to assess Mr. Levy's fresh evidence motion was explained by this Court in *R. v. West*, 2010 NSCA 16:

> [28] Section 683(1) of the **Criminal Code** permits the Court of Appeal, "where it considers it in the interests of justice", to allow the introduction of fresh

evidence. In R**. v. Wolkins**, 2005 NSCA 2, Cromwell J.A. (as he then was) reviewed the applicable principles:

> [57] Both the SCAC and this Court have a wide discretion to admit new evidence on appeal where it is in the interests of justice: **Criminal Code**, s. 683(1). Case law has structured the exercise of this discretion in the various contexts in which new evidence may be advanced.
>
> [58] Fresh evidence tends to be of two main types: first, evidence directed to an issue decided at trial; and second, evidence directed to other matters that go to the regularity of the process or to a request for an original remedy in the appellate court. The legal rules differ somewhat according to the type of fresh evidence to be adduced. …
>
> [59] Fresh evidence on appeal which is directed to issues decided at trial generally must meet the so-called **Palmer** test. …
>
> …
>
> [61] The other category of fresh evidence concerns evidence directed to the validity of the trial process itself or to obtaining an original remedy in the appellate court. In these sorts of cases, the **Palmer** test cannot be applied and the admissibility of the evidence depends on the nature of the issue raised. …

[16] The *Palmer* test, set out in *R. v. Palmer*, [1980] 1 S.C.R. 759, is as follows:

> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in criminal cases as in civil cases;
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief; and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

Further, as stated in *West*:

> [34] The fresh evidence could only affect the result, under **Palmer**'s fourth factor, if it is admissible under the usual rules of evidence that govern criminal proceedings. Section 683(1) does not dispense with the law of evidence. …

[17] The fresh evidence Mr. Levy seeks to introduce on appeal is a 1990 journal article.[4] The subject matter of the article is *"Antibacterial Properties of Saliva: Role in Maternal Periparturient Grooming and in Licking Wounds"* (Article). However, in the history of these proceedings, this is not the first time this Article has arisen, nor Mr. Levy's proposition that canine saliva contains antibiotic properties.

[18] As noted, Mr. Levy was convicted of failing to provide one of his puppies with adequate medical attention when the animal was wounded or ill. Mr. Levy contended allowing his puppy to lick his injuries was a diligent approach because antibiotic properties in the puppy's saliva could stave off infection and promote healing. Mr. Levy mentioned there was science to back up his proposition.

[19] The trial judge found that Mr. Levy did not act with due diligence towards his puppy:

> The Court accepts the evidence of Dr. MacKenzie and Dr. Pollard that the injuries to this puppy would not have healed without medical intervention. Without medical treatment, this dog could have died, and the cuts were not getting better.
>
> By December the 17th when the dog was seized and seen by Dr. MacKenzie, the swelling and inflammation was obvious. The swelling in the area of the cuts was severe.
>
> Based upon the evidence, I am satisfied beyond a reasonable doubt that Mr. Levy's watching and waiting approach was not adequate medical attention. The failure of Mr. Levy to provide adequate medical attention to this puppy the Court finds constituted a violation of Section 22 (6) of the [*Act*].
>
> …
>
> Section 22(6) of the [*Act*] does not require a dog owner to seek medical attention for every cut or scrape a dog gets. But as Mr. Levy acknowledged, the cuts on this puppy were nasty. They were severe.
>
> And I find that they were not getting better. And by December the 17th, that was obvious. And if it was not unreasonable to take the puppy to the vet immediately upon seeing the wounds, it was unreasonable not to take the puppy to the vet as the injury was becoming more severe over time.
>
> I find that Mr. Levy's mere watching did not constitute due diligence. …

[4] According to information provided by Mr. Levy the article was published in the American Journal: *Psychology & Behavior*, Vol. 48. Pp. 383-386 by Pergamon Press. The noted authors of the article are: Benjamin L. Hart and Karen L Powell, Department of Physiological Sciences, School of Veterinary Medicine University of California.

[20] Although Mr. Levy had the proffered Article at the time of trial, he did not attempt to have it tendered as evidence. He provided it to the judge after he was convicted and prior to being sentenced. As set out in his fresh evidence submissions, Mr. Levy now blames the trial judge for his missteps and says this goes to trial fairness:

> THE NEW EVIDENCE REQUEST REACHES INTO THE AREA OF TRIAL FAIRNESS. …
>
> …
>
> THE MATTER OF THE EXISTENCE OF THE DOCUMENT AND ITS CONTENT WAS NOT ELUCIDATED BECAUSE THE APPELLANT, NOT LEGALLY TRAINED, SIMPLY, IN THE "HEAT" OF THE MOMENT, FORGOT TO RAISE A MATTER OF THE LEARNED DOCUMENTS PRESENCE, AND BECAUSE THE COURT DID NOT THINK TO ASK.
>
> …
>
> IN THE INTERESTS OF BEING FAIR TO BOTH PARTIES, HIS HONOR WAS REQUIRED … TO INQUIRE IF SUCH INFORMATION EXISTED…

[21] During his appeal hearing before the SCAC judge, the Article arose for a second time. The SCAC judge did not admit the Article as fresh evidence but allowed Mr. Levy to refer to it in his arguments. She explained:

> THE COURT: Okay. Mr. Levy, at that point in time, the trial was over and the paper was not entered into evidence. So, it is not evidence.
>
> And on an Appeal, there are very strict rules about rely – on – very strict rules about a party relying on what we call fresh evidence. …
>
> Now, you did not notify, as far as I'm aware, the Crown or the Court that you wanted to introduce fresh evidence in this Appeal. And so, you have not gone through the proper process to introduce new evidence.
>
> So, what I'm going to allow you to do, again, because you're unrepresented and you're not a lawyer, I will allow you some leeway to talk about this paper in your argument. But I'm going to take it as an argument, not evidence. …

[22] I have examined the fresh evidence against the admissibility framework set out earlier to determine if it should be admitted. Regardless of whether the fresh evidence relates to an issue at trial or the trial process, or both, I would not admit it.

[23] The proffered evidence clearly fails to meet the *Palmer* test. It can hardly be said to be fresh. The appellant had the Article and could have sought to tender it at

trial or during his appeal before the SCAC. Whether it would have been admitted is another matter; but the fault for not attempting to do so lies at Mr. Levy's feet.

[24] Mr. Levy is a self represented person but the record demonstrates an articulate and reasonably well informed litigant who ably advanced his arguments before a very patient trial judge and SCAC judge, who explained legal and evidentiary processes to Mr. Levy. For example, the trial judge explained to Mr. Levy the difference between a lay person testifying to what they observed versus an expert who can give opinion evidence.

[25] In short, Mr. Levy did not exercise due diligence in bringing the proposed fresh evidence forward.

[26] Further, the Article is hearsay. Mr. Levy did not tender it through the author(s) or any qualified expert who could speak to its subject matter. Also, it was written 34 years ago and is being presented with no context of its current value or applicability to the specific context of the puppy's injuries in this case.

[27] In my view, the Article is not in admissible form. Even if it were, it would fail the admissibility test as the Article would not have affected the trial result. The Article content itself is not sufficiently cogent that it could reasonably be expected to have affected the verdict. That is particularly so, when taken with the other evidence adduced at trial which the judge accepted and relied upon. Both veterinarian experts who testified for the Crown explained why they did not believe letting the puppy lick its wounds would be adequate medical treatment. One of the experts even explained how letting the puppy lick its wounds could make the situation worse due to the bacterial loads in a dog's mouth.

[28] For the foregoing reasons, it is not in the interests of justice to accept the proposed evidence. I would dismiss the fresh evidence motion.

Leave to appeal

[29] Mr. Levy seeks a second appeal of the noted summary convictions. As s. 839 of the *Criminal Code* makes clear, the first hurdle he must overcome is to obtain leave to appeal. This section reads, in part:

> … an appeal to the court of appeal as defined in section 673 may, with leave of that court or a judge thereof, be taken on any ground that involves a question of law alone, against

> (a) decision of a court in respect of an appeal under section 822… .

[30] A s. 839 appeal is not a second appeal from the trial decision – in this case the decision of Judge Chisholm. Rather, it is an appeal from the SCAC judge's (Justice Gatchalian) decision. Section 839 restricts the appeal of her decision to questions of law alone. Absent errors in law, this Court cannot revisit factual findings or correct errors of mixed fact and law. Further, even if Mr. Levy raised a question of law arising from the SCAC judge's decision, that does not automatically result in leave being granted by this Court.

[31] The issue of leave to appeal under s. 839 of the *Criminal Code* was recently reviewed by this Court in *R. v. Ankur; R. v. Chandran*, 2023 NSCA 55 wherein Justice Bryson explained:

> [6] Because this is an appeal under s. 839 of the *Criminal Code*, it is restricted to questions of law on leave. The standard of review is correctness (*R .v. Pottie*, 2013 NSCA 68, at ¶14; *R. v. MacNeil*, 2009 NSCA 46, at ¶8).
>
> [7] Leave to appeal in accordance with s. 839 of the *Criminal Code* is sparingly granted. This Court will consider the significance of the legal issues raised to the general administration of criminal justice and the merits of the proposed grounds of appeal. If issues significant to the administration of justice transcend the particular case, leave may be granted, even if the merits are not strong although they must be arguable. Alternatively, where the merits appear very strong, leave to appeal may be granted, even if the issues are of no general importance, particularly if the convictions are serious and the applicant faces a significant deprivation of his or her liberty (*Pottie*, at ¶18-19).
>
> [8] In *Pottie*, the Court endorsed the Crown's submissions, summarizing the principles from the case law when deciding whether to grant leave:
>
> > [21] The Crown, in its factum, has accurately summarized the principles that have emerged from the case law to guide provincial appellate courts when deciding whether to grant leave to appeal from a SCAC decision. They are:
> >
> > 1. Leave to appeal should be granted sparingly. A second appeal in summary conviction cases should be the exception and not the rule.
> >
> > 2. Leave to appeal should be limited to those cases in which the appellant can demonstrate exceptional circumstances that justify a further appeal.
> >
> > 3. Appeals involving well-settled areas of law will not raise issues that have significance to the administration of justice beyond a particular case.

> 4. If the appeal does not raise an issue significant to the administration of justice, an appeal that is merely "arguable" on its merits should not be granted leave to appeal. Leave to appeal should only be granted where there appears to be a clear error by the SCAC
>
> 5. A second level of appeal is an appeal of the SCAC justice. It is to see if he or she made an error of law. The second level of appeal is not meant to be a second appeal of the provincial court decision.
>
> 6. The fitness or leniency of a sentence is a factor a provincial appellate court can consider when deciding whether to grant leave.[5]
>
> [emphasis added]

[32] The Crown opposes Mr. Levy's application for leave to appeal. The Crown submits:

> 6. It is not clear the Appellant is arguing the Summary Conviction Appeal Justice erred with respect to a question of law alone. In any event, even if the Appellant's proposed appeal does raise a question of law alone, it is not one that merits a second appeal.
>
> 7. The proposed appeal is obviously important for the Appellant. However, it is not significant for the administration of justice. …
>
> …
>
> 96. This case does not raise any issues of significance for how to decide strict liability offences. It is restricted to its own set of facts.
>
> 97. As well, it would not be significant to the administration of justice to examine whether the [SCAC judge] erred in how she applied well established legal tests for whether a trial judge misapprehended evidence or reached an unreasonable verdict.
>
> 98. There would be little precedential value in having a second appeal of this regulatory offence in this case.
>
> 99. No clear error of law was made by the [SCAC judge]. [She] correctly set out the appropriate standard of review and legal principles that apply to this case. …
>
> 102. The Appellant is asking this Court to undertake the same analysis as the [SCAC judge] but come to a different conclusion. That is not this Court's [role].
> …
>
> 104. This is not a case where failing to grant leave would risk the Appellant suffering a significant deprivation of his liberty.

[5] Citations omitted from sub-paras. 1- 6.

[33] I agree with the Crown's submissions. With respect, Mr. Levy has not advanced a legal issue important to the administration of justice that requires resolution. Further, the record does not reveal any error of law let alone a clear error of law, nor has there been a significant deprivation of Mr. Levy's liberty. Accordingly, I would deny leave to appeal.

Disposition

[34] I would dismiss the motion for fresh evidence and deny leave to appeal.

Van den Eynden, J.A.

Concurred in:

Bourgeois, J.A.

Beaton, J.A.