

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Plummer*,  
2017 BCSC 1579

Date: 20170906  
Docket: 27081  
Registry: Vancouver

Between:

**Regina**

v.

**Scott Plummer**

Before: The Honourable Mr. Justice Bowden

## **Reasons for Judgment**

Counsel for the Crown (Respondent):

J. Patterson

Counsel for Accused (Appellant):

M.K. Woodall

Counsel for the Applicant:

B. Martland

Place and Date of Hearing:

Vancouver, B.C.  
July 21, 2017

Place and Date of Judgment:

Vancouver, B.C.  
September 6, 2017

[1] The Police Complaint Commissioner (PCC) applies to intervene in an appeal by Police Constable Plummer of the Vancouver Police Department (“VPD”) of a conviction under the *Motor Vehicle Act*.

[2] The conviction arose as a result of PC Plummer driving a police vehicle, while on duty, through a red light and causing a collision and injury. Following a trial in the Provincial Court, PC Plummer was found guilty of the offence of driving without due care and attention contrary to s. 144(1)(a) of the *Motor Vehicle Act*, RSBC 1996, c. 318. A fine of \$500 was imposed.

[3] The matter was investigated by the PCC and other departments of the VPD. The PCC sent a report to Crown counsel containing investigative material and compelled statements from PC Plummer and the officer who was a passenger in the police vehicle at the time of the collision.

[4] Before conviction the appellant sought a stay of proceedings or a declaration that the provision of the compelled statements amounted to an abuse of process under the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. To support that application the appellant obtained a subpoena requiring the attendance of the PCC at trial. The PCC brought an application to quash the subpoena and the trial judge allowed the application. The trial judge also dismissed the application based on an abuse of process.

[5] The Crown respondent does not oppose the application by the PCC to intervene in this appeal but seeks clarification that intervention cannot be granted on the basis of the court’s inherent jurisdiction. Rather, it is the respondent’s position that by virtue of s. 109(1) of the *Offence Act*, RSBC 1996, c. 338 and s. 683 of the *Criminal Code*, RSC, 1985, c. C-46 the court may exercise its power under Rule 6-2(7) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 to add parties.

[6] In light of the looming date for the hearing of the appeal, I will not deal with the jurisdictional question and proceed on the basis that the court either has the

inherent jurisdiction to grant intervenor status in the appeal, (*International Forest Products v. Kern et al*, 2000 BCSC 1087), or by operation of s. 109(1) of the *Offence Act* and s. 683(3) of the *Criminal Code*, the court has jurisdiction under Rule 6-2(7) of the *Supreme Court Civil Rules* to add a party.

[7] The appellant agrees that the PCC should be permitted to intervene but on a limited basis. The appellant says that the PCC should be permitted to participate in the appeal but only in respect of the trial judge's decision to quash the subpoena issued to the PCC. The appellant argues that the PCC should not be permitted to participate on the issue of whether a constitutional remedy should have been granted by the trial judge.

[8] The PCC argues that the grounds of appeal directly implicate the PCC's conduct in relation to the alleged driving infraction by PC Plummer and involve the statutory interpretation of the *Police Act*, RSBC 1996, c. 367. The PCC does not seek to take any position with respect to the correctness of the conviction entered by the trial court. Nor does he seek to widen the issues arising in the appeal or to lead any new evidence. He seeks to be heard on the questions of the interpretation of the *Police Act* and the process for police disciplinary matters within the context of the appeal as framed by the parties.

### **Analysis**

[9] The tests for an application to intervene to be granted have been considered in a number of cases such as *International Forest Products v. Kern et al*, at para. 20-21; *West Moberly First Nations v. British Columbia*, 2013 BCSC 2059 at paras. 6-9; *R. V. Watson and Spratt*, 2006 BCCA 234 at para. 3 and have been well summarized by Groberman J.A. in *R. V. Bornyk*, 2014 BCCA 450 at paras. 5-7 as follows:

[5] The considerations that apply to intervenor applications are well established. In *R. v. Watson and Spratt*, 2006 BCCA 234 at para. 3. Madam Justice Newbury set out four considerations: the nature of the issue in the proceedings; whether the proceedings legitimately engage the interests of the applicants; the representativeness of the applicant of a particular point of view or perspective that may be of assistance to the Court; and whether the

applicant's point of view or perspective will assist the Court in resolving the issues in the proceeding.

[6] Earlier, in *Guadagni v. British Columbia (Workers Compensation Board)*, [1988] 30 B.C.L.R. (2nd) 259 at para. 4, Mr. Justice Locke set out three broad considerations to be taken into account on applications for intervention: the nature of the group seeking intervenor status; the directness of the group's interests in the matter; and the suitability of the issues in the appeal to an intervention.

[7] These are threshold considerations. Interventions will generally not be allowed unless the applicant group has legitimacy, is generally concerned about the issues on the appeal, and can state issues that are suitable for intervention. Beyond these threshold considerations, an order allowing intervention is discretionary and the Court must be convinced that the intervention will be of assistance to it.

[10] Having considered the nature of the issues in the proceedings I am satisfied that the interests of the PCC are legitimately engaged. In my view the PCC has a direct interest in the outcome of the appeal. He is not an outsider to the litigation but was actively involved in relation to the subpoena issue when that was dealt with at the trial court. The PCC also stands to be affected by the determination of issues involving the interpretation of the *Police Act*.

[11] Further, the PCC is likely to bring a particular perspective regarding such things as the model of police discipline contemplated by the *Police Act* and assist the court in resolving the issues relating to the application of that statute. It is reasonable to expect that the PCC's submissions will be focused on issues for which his statutory role and experience permit him to offer a distinct perspective.

[12] The appellant argues that the interpretation of the *Police Act* is a simple matter of statutory interpretation in relation to which the PCC has no special expertise. There are many considerations arising when a statute is being interpreted and in my view the perspective of the PCC regarding the application of the *Police Act* should be of assistance to the appeal court.

[13] It is important to note that the PCC seeks a narrow role in the proceedings. He is not seeking to lead evidence. He seeks an opportunity to make submissions

lasting one to two hours and is prepared to limit his factum to 20 pages thus not unduly delaying or complicating the proceedings.

[14] The parties are agreed that the PCC should be granted intervenor status with respect to the subpoena issue and I assume that they have been proceeding on the basis that intervention on that basis will be permitted by this Court. I am satisfied that the requirements for intervention in relation to that issue and the issues arising from the interpretation of the *Police Act* have been met.

[15] In order to prevent any delay resulting from the granting of intervenor status to the PCC, the PCC, (See: *Canadian Broadcasting Corporation v. Attorney General for New Brunswick* (March 8, 1996, Supreme Court of Canada, Bulletin of Proceedings at page 379)), will not be permitted to seek an adjournment of these proceedings to accommodate his intervention.

**Orders**

[16] The PCC is granted leave to intervene in the appeal and is permitted to make oral and written submissions provided that oral submissions shall not exceed 2 hours and written submissions shall not exceed 20 pages in length.

[17] The PCC is not permitted to seek an adjournment of the proceedings to accommodate his intervenor status.

“Bowden, J.”