

PRINCE GEORGE

MAY 13 2024

COURT REGISTRY IN THE SUPREME COURT OF BRITISH COLUMBIA

Court File No. 2463673
Prince George Registry

In the matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

BETWEEN:

LEARN TO EARN BARTENDING AND CONSULTING INC.

PETITIONER

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

RESPONSE TO PETITION

Filed by: Attorney General of British Columbia

THIS IS A RESPONSE TO the petition filed 12 April 2024.

Part 1: ORDERS CONSENTED TO

The Attorney General of British Columbia consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: N/A.

Part 2: ORDERS OPPOSED

The Attorney General of British Columbia opposes the granting of the orders set out in the following paragraphs of Part 1 of the petition: 1 – 3.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Attorney General of British Columbia take no position on the granting of the orders set out in the following paragraphs of Part 1 of the petition: N/A.

Part 4: FACTUAL BASIS

A. Overview

1. By petition filed on April 12, 2024, the petitioner, Learn to Earn Bartending and Consulting Inc., seeks judicial review of various decisions made by the Honourable Judge Nadon in the context of ongoing violation ticket proceedings in the Provincial Court.
2. The petitioner claims that:
 - a. the trial judge erred by declining to order a French or bilingual trial pursuant to s. 530 of the *Criminal Code*;
 - b. the trial judge erred by permitting a trial to proceed in breach of s. 11(b) of the *Charter of Rights and Freedoms*; and
 - c. the trial judge breached s. 10(b) of the *Charter* by refusing to permit the petitioner to be represented by counsel of the disputant's choice.
3. The respondent opposes the granting of the relief sought in this petition and submits that the petition should be dismissed.
4. First, the petition does not comply with the requirements of s. 14 the *Judicial Review Procedure Act*, R.S.B.C. 1996. The petitioner has provided no supporting affidavit evidence and insufficient particulars identifying the factual and/or legal basis for its claims.
5. Second, as concerns the renewed request for a French or bilingual trial, the petition should be dismissed because the petitioner is seeking relief for reasons that were already rejected by this Court: *Learn to Earn Bartending and Consulting Inc. v British Columbia (Attorney General)*, 2023 BCSC 1570. In addition, the petitioner has commenced an appeal against the order dismissing its earlier petition for judicial review.¹ As such, this petition amounts to a collateral attack against this Court's previous order and against the petitioner's ongoing appeal of that order.

¹ Affidavit # 1 of Robyn Hynes (May 2, 2024) ["Hynes Affidavit"], Ex. D.

6. Third, to the extent the petitioner raises grounds of review that were not previously adjudicated, the new grounds are not amenable to *certiorari* review and must, if at all, be pursued in a summary conviction appeal. As a general rule, interlocutory appeals and judicial reviews are not permitted in criminal matters: *R. v. Awashish*, 2018 SCC 45, at para. 23. The petitioner's grounds of review alleging violations of ss. 10(b) and 11(b) are not premised on allegations of jurisdictional error and so cannot be advanced by way of *certiorari* relief on judicial review.

7. The respondent respectfully submits that this petition should be dismissed.

B. Facts

8. On November 30, 2021, the petitioner was served with a violation ticket (AJ20573780-1) alleging violations of Covid-related public health orders in contravention of the *COVID-19 Related Measures Act*, SBC 2020, c 8.²

9. The petitioner elected to dispute the violation ticket.

10. The petitioner is a British Columbia company incorporated on February 13, 2004, with a registered and records office located at 1488 Fourth Avenue, Prince George, British Columbia.

11. The petitioner's sole director and officer is listed as Linda Louise Allen.³ There is no evidence that Ms. Allen is francophone or bilingual.

12. The petitioner operates a nightclub business known as Lambda Cabaret which is located at 1177 3rd Avenue, Prince George, British Columbia.

13. Between March 2022 and April 2023, the petitioner brought three applications seeking to have a French or bilingual trial pursuant to s. 530 of the *Criminal Code*. These applications were dismissed by the Honourable Judge Nadon.⁴

14. On June 13, 2023, petitioner filed its first petition for judicial review ("First Petition").⁵ In the First Petition, the petitioner alleged that the trial judge erred by refusing to order a French or bilingual trial pursuant to s. 530 of the *Code*.

² Hynes Affidavit, pp. 35-36.

³ Hynes Affidavit, pp. 75-76.

⁴ Hynes Affidavit, pp. 217-218.

15. On July 6, 2023, the respondent Attorney General of British Columbia filed its response to the First Petition.⁶
16. On July 17, 2023, the petitioner's First Petition was heard by Justice Church in Prince George Supreme Court.
17. On September 7, 2023, Justice Church released reasons for judgment dismissing the petitioner's petition.
18. On October 3, 2023, the petitioner filed a Notice of Appeal with the Court of Appeal for British Columbia appealing Church J.'s order dismissing the First Petition.⁷
19. In the meantime, proceedings before the Provincial Trial Court continued.
20. On January 16, 2024, the petitioner's application for Judge Nadon to recuse himself was dismissed.⁸
21. On February 14, 2024, the petitioner's application to be represented by a non-lawyer agent (W. Kolmer) was dismissed.
22. On March 11, 2024, the petitioner was tried and convicted for violating the *COVID-19 Related Measures Act* and sentenced to the applicable mandatory minimum fine.⁹
23. On March 11, 2024, the petitioner brought a s. 11(b) *Jordan* application, which is scheduled to be heard on June 12, 2024.¹⁰

Part 5:LEGAL BASIS

A. The petition is inadequate

24. As a preliminary point, the respondent submits that the petition in this matter does not comply with s. 14 of the *Judicial Review Procedure Act*.

⁵ Hynes Affidavit, pp. 1-14.

⁶ Hynes Affidavit, pp. 15-30.

⁷ Hynes Affidavit, pp. 188-191.

⁸ Hynes Affidavit, pp. 219.

⁹ Hynes Affidavit, pp. 220.

¹⁰ Hynes Affidavit, pp. 220.

25. Section of the *Judicial Review Procedure Act* provides:

14 An application for judicial review is sufficient if it sets out the ground on which relief is sought and the nature of the relief sought, without specifying by which proceeding referred to in section 2 the claim would have been made before February 1, 1977.

26. The petition is insufficient in the following respects:

- a. the petitioner has provided no supporting affidavit evidence;
- b. the petition does not adequately identify the decision or statutory powers of decision that under review;
- c. the petitioner has not provided transcript or copies of the decisions that are the subject of the proposed judicial review; and
- d. the petition contains no particulars explaining the basis of its claims under ss. 10(b) or 11(b) of the *Charter of Rights and Freedoms*.

27. The case law confirms that “the failure to state the grounds upon which relief is sought and the failure to state the grounds upon which the claim is based are fatal to a petition”: *Mayden v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2015 BCSC 692, at para 72.

B. Jurisdiction and Standard of Review

28. This judicial review arises out of quasi-criminal violation ticket proceedings in the Provincial Court. As a general rule, interlocutory appeals and judicial reviews are not permitted in criminal or quasi-criminal matters: *Awashish*, at para. 10.

29. In limited circumstances, *certiorari* relief can be used to review interlocutory or “non-final” orders based on alleged jurisdictional error made by a provincial court judge: *R. v. Russell*, 2001 SCC 53 at para. 19; *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31, at paras. 22 to 24.

30. Jurisdictional error can be said to have occurred “where the court fails to observe a mandatory provision of a statute or where a court acts in breach of the principles of natural justice”: *Awashish*, at para. 23.

31. Where jurisdictional error is alleged to have occurred, the applicable standard of review is correctness: *Bessette*, at paras. 22 to 24.

C. The Petition is a Collateral Attack and Abuse of Process

32. This court should summarily dismiss the proposed grounds of review concerning the application of s. 530 on the basis that these grounds of review constitute both a collateral attack and an abuse of process.

33. On June 12, 2023, the petitioner filed its First Petition challenging the Honourable Judge Nadon's refusal to order that the petitioner's trial proceed as French or bilingual trial.¹¹ The grounds of review in First Petition related to s. 530 of the *Code* were identical to the grounds of review raised in this petition.

34. On July 17, 2023, the petitioner's First Petition was heard by Madam Justice Church.

35. On September 7, 2023, the petitioner's First Petition was dismissed by Madam Justice Church.

36. On October 3, 2023, following the dismissal of the First Petition, the petitioner appealed against the order dismissing its First Petition.¹² Although the petitioner's appeal remains active in the Court of Appeal, the petitioner has taken no steps to pursue its appeal of Justice Church's order.¹³

37. Any attempt by the petitioner to challenge the trial judge's decision refusing to order a French or bilingual trial should be dismissed as both a collateral attack on Justice Church's order and on the petitioner's ongoing appeal of that order.

38. A collateral attack has been described as an attack on an order "made in proceedings other than those whose specific object is the reversal, variation or nullification of the order": *R. v. Bird*, [2019] 1 S.C.R. 409, para. 21.

39. To decide if a proposed claim is a collateral attack, "the court should ask whether the claim, or any part of it, amounts in effect to an appeal of an existing order": *M.K. v.*

¹¹ Hynes Affidavit, pp. 1-14.

¹² Hynes Affidavit, Ex. D.

¹³ Hynes Affidavit, paras. 4.

British Columbia (Attorney General), 2020 BCCA 261 at para. 33. If a new claim “will amount ‘in effect’ to an appeal of an existing order if it seeks to invalidate, or otherwise challenge the legal force of, the order”, it is a collateral attack and an abuse of process: *M.K.*, para. 33.

40. The respondent submits that this new petition is collateral attack on the order of Justice Church dismissing the First Petition. To the extent the petitioner wishes to challenge Justice Church’s order, the appropriate forum to do so is the Court of Appeal for British Columbia.

D. *Certiorari* is not available for s. 10(b) and 11(b) *Charter* violations

41. The remainder of the petition should be dismissed because it advances grounds of review that do not involve allegations of jurisdictional error. In the absence of jurisdictional error, *certiorari* is not available: *Awashish*, para. 24.

42. It is well-established that there are no appeals from interlocutory findings in criminal or quasi-criminal matters: *Awashish*, at para. 10. As the Supreme Court of Canada explained in *Awashish*, at para. 11, the use of *certiorari* is “tightly limited by the *Criminal Code* and the common law so as to ensure that it is not used to do an “end-run” around the rule against interlocutory appeals.”

43. In criminal and quasi-criminal matters, applications for *certiorari* are rare due to the comprehensive scheme of appeal rights available under the *Criminal Code*. All rights of appeal in criminal matters are conferred by statute: *Holzbauer v. British Columbia (Attorney General)*, 2021 BCCA 458, at para 17. Sections 102 and 124 of the *Offence Act* provide for appeal rights in relation to provincial offences.

44. An “error of law” and an “error of jurisdiction” are not the same thing. Jurisdictional error can be said to have occurred “where the court fails to observe a mandatory provision of a statute or where a court acts in breach of the principles of natural justice”: *Awashish*, at para. 23.

45. The petitioner’s proposed grounds of appeal involving ss. 10(b) and s. 11(b) do not involve questions of jurisdiction. A lower court does not commit jurisdictional error giving rise to an interlocutory review merely because a ruling implicates an accused’s

Charter rights: *R. v. Hammerbeck*, 1992 CanLII 1483 (BC CA); *R. v. Kerzner* (1991), 1991 CanLII 11726 (ON CA), at para. 6; *R. v. M.N.*, 2022 ONCA 358, at para 31.

E. Costs

46. The respondent Attorney General of British Columbia does not seek its costs and asks that no award of costs be made against it.

Part 6: MATERIAL TO BE RELIED ON

1. The jurisprudence cited herein;
2. The Affidavit # 1 of Robyn Hynes dated May 2, 2024; and
3. Such further and other material as counsel may advise.

The respondent estimates that the hearing of this petition will take one hour.

Date: May 2, 2024.



Signature of Micah B. Rankin, K.C.

lawyer for the Attorney General of British Columbia

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