

COURT OF APPEAL OF  
NEW BRUNSWICK



COUR D'APPEL DU  
NOUVEAU-BRUNSWICK

6-23-CA

B E T W E E N:

E N T R E :

KEVIN CORCORAN

KEVIN CORCORAN

APPELLANT

APPELANT

- and –

-et-

HIS MAJESTY THE KING

SA MAJESTÉ LE ROI

RESPONDENT

INTIMÉ

Corcoran v. R., 2023 NBCA 107

Corcoran c. R., 2023 NBCA 107

Motion heard by:  
The Honourable Justice Green

Motion entendue par :  
l'honorable juge Green

Date of hearing:  
December 6, 2023

Date de l'audience :  
le 6 décembre 2023

Date of decision:  
December 12, 2023

Date de la décision :  
le 12 décembre 2023

Counsel at hearing:

Avocats à l'audience :

Kevin Corcoran appeared on his own behalf

Kevin Corcoran, en son propre nom

For the respondent:  
Christopher Whibbs

Pour l'intimé :  
Christopher Whibbs

DECISION

[1] Mr. Corcoran has requested by Notice of Motion that he be provided with state-funded legal counsel pursuant to s. 684(1) of the *Criminal Code*, which provides:

684 (1) A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

684 (1) Une cour d'appel, ou l'un de ses juges, peut à tout moment désigner un avocat pour agir au nom d'un accusé qui est partie à un appel ou à des procédures préliminaires ou accessoires à un appel, lorsque, à son avis, il paraît désirable dans l'intérêt de la justice que l'accusé soit pourvu d'un avocat et lorsqu'il appert que l'accusé n'a pas les moyens requis pour obtenir l'assistance d'un avocat.

[2] The test to be applied when considering applications under s. 684 was set out by Drapeau C.J.N.B. (as he then was) in *Smith v. R.*, 2012 NBCA 99, 396 N.B.R. (2d) 367:

The Court's power under s. 684 is contingent upon it appearing desirable in the interests of justice that an appellant, whose indigence has been established, should have legal assistance. As a general rule, that will be so only in instances where the appeal's complexity, whether factual or legal, causes the Court or one of its judges to conclude: (1) it is unlikely the appellant will be able to make the case for intervention; and (2) the assistance of counsel is required for the panel to properly exercise its reviewing function. It should go without saying, but there is merit in underscoring the obvious: taxpayers foot the bill for any assignment of counsel under s. 684. That consideration coupled with the nature of the proceedings, the fairness obligations of Crown counsel and the panel members' impartiality, knowledge of the law and experience goes a long way in explaining and justifying the exceptionality of s. 684 orders. [para. 7] [Underlining in original.]

[3] For its part, the Crown opposes Mr. Corcoran's application on various grounds.

[4] In my opinion, Mr. Corcoran has not satisfied the test set out in *Smith v. R.* He has not convinced me he will be unable to properly present his case, nor has he established “the assistance of counsel is required for the panel to properly exercise its reviewing function”.

[5] The application for the appointment of state-funded counsel is dismissed.

[6] With the approval of the Chief Justice, s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, is invoked and this decision will issue first in the English language, and thereafter, at the earliest possible time, in the other official language.