

COURT OF APPEAL FOR ONTARIO

DATE: 20190909
DOCKET: M50322 (C66607 & C66609)

Watt J.A. (In Chambers)

BETWEEN

Her Majesty the Queen

Respondent

and

Robert Thomas Barra and Shailesh Hansraj Govindia

Appellants (Moving Parties)

Seth Weinstein and Alannah Fotheringham, for the moving parties

Jennifer Conroy, for the respondent

Elizabeth Logan, for Carolyn Ivanoff

Heard: May 13, 2019

ENDORSEMENT

[1] Robert Barra and Shailesh Govindia challenge their convictions of bribery of a foreign public official. They want their appeal heard, but they lack the means to do so. Not the financial means, but something else.

[2] The impediment to progress on their appeal results from a dispute. The dispute is between their lawyers and an authorized court transcriptionist (ACT). The dispute is about the fees the ACT is entitled to charge and the lawyers are

required to pay for the outstanding portions of the transcript necessary for the preparation, hearing and determination of the appeal.

[3] The appellants, like others before them, seek directions on the issue. These directions, as in *R. v. C.G.*, 2018 ONCA 751, follow.

The Background Facts

[4] The events giving rise to this dispute are uncontroversial and can be outlined economically.

The Trial Proceedings

[5] The appellants were tried jointly by a judge of the Superior Court of Justice sitting without a jury. Trial proceedings lasted about five and one-half weeks.

The In-Trial Transcripts

[6] As the trial progressed, counsel ordered transcripts of 20 days of the evidence given at trial. The proceedings were transcribed by eight ACTs. The rates charged and paid were \$4.30 per page for the original transcript and \$0.55 per page for copies of that transcript.

The Appeal Transcripts

[7] On January 11, 2019 the trial judge convicted the appellants of a count of bribery of a foreign public official, contrary to s. 3(1) of the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34.

[8] About one month after the convictions had been entered, counsel for the appellant Barra ordered six copies of the trial transcript for use on the appeal. At the time the order was placed, it was made clear to each of the eight ACTs involved in transcript preparation that the fees exigible for the transcripts, which had already been prepared, would be \$0.55 per page for one copy. The printing and binding of the transcripts would be done by the Queen's Printer at no charge to the ACT or the ordering party.

[9] Counsel's proposal, which coincided with the decision in *C.G.*, was agreeable to all but one of the ACTs who had prepared the original transcripts at trial for which each had been paid \$4.30 per page for the original and \$0.55 per page for copies.

The Dispute

[10] The ACT who disagreed with the fee schedule proposed by appellate counsel had transcribed seven days of evidence at trial. In her view she was entitled to a rate of \$0.55 per page per copy for each of the six copies of transcript necessary for the purposes of the appeal. In addition, she said she was not required to submit her transcript to the Queen's Printer for copying and binding at no cost to her or to the parties.

[11] The costs differ substantially. According to appellate counsel's proposal based on the decision in *C.G.*, the cost would be approximately \$451.55 exclusive

of HST. Under the ACT's proposal, the cost estimate was \$2,709.30, exclusive of HST.

The Application

[12] By this application, the appellants seek an order compelling the remaining ACT to produce and deliver six certified copies of the trial transcripts she originally prepared, with printing and binding done by the Queen's Printer, for which she will be paid a fee of \$0.55 per page for one copy. In the alternative, the appellants seek an order requiring delivery of an electronic copy of the transcript to the Court Services Division of the Ministry of the Attorney General for which the transcriptionist will be paid \$20.00 by Court Services Division.

The Positions of the Parties

[13] The positions advanced by the parties duplicate those advanced by their predecessors in *C.G.* The appellants seek an order the equivalent of that made in *C.G.* on the basis of the reasons given there.

[14] The transcriptionist did not appear, but did file written materials incorporating what had been filed on behalf of the transcriptionists in *C.G.* I also received submissions on her behalf from another ACT who appeared electronically. The essence of their position appears to be that the ACT is not bound by the decision in *C.G.* because she was not a party to it, and, in any event, the decision is wrong in law and should not be followed.

The Governing Principles

[15] The principles whose application controls the outcome of this application are set out in full in *C.G.* They need not be repeated here.

The Principles Applied

[16] It is unnecessary to engage in a discussion of the reach of the doctrine of precedent in the circumstances of this case. It is enough to say that the principles in *C.G.* apply here and determine the result.

[17] In these circumstances, my directions are these:

- i. The ACT may produce and deliver six certified copies of the transcripts within 10 days of the release of these reasons, with printing and binding to be done by the Queen's Printer, at no cost to the ACT or the appellants, for which the ACT will be paid a fee of \$0.55 per page for one copy of the transcript;
- ii. If the ACT fails or refuses to produce the transcripts as described in paragraph i., she shall deliver an electronic copy of the transcript to CSD, in an electronic form acceptable to CSD, within 10 days of the release of these reasons, for which she shall be paid \$20.00 by CSD;
- iii. In that case, CSD shall arrange for the transcript to be reformatted if necessary, printed and bound by the Queen's Printer, and certified by

another ACT at a cost of \$0.55 per page for one copy, payable by the appellants to CSD; and

- iv. If CSD is unable to provide a reformatted and certified copy of the transcript, the appeal will proceed on a photocopy of the transcript.

[18] To avoid the necessity of motions for directions to resolve these fiscal disputes, the following steps should be taken. When an ACT receives an order during the trial to prepare a transcript of trial proceedings, but intends to charge \$0.55 per page per copy for appeal transcripts, the ACT must give specific notice to and secure the agreement of the ordering party to this effect before accepting the order. Failing such notice and agreement, the appeal copies will be prepared and bound by the Queen's Printer, at no charge to the ACT or the ordering party. If the ACT refuses to prepare an appeal transcript otherwise than for \$0.55 per page per copy, the ordering party is free to choose another ACT to prepare the transcript and any further copies necessary for appeal.

Samuel R.