

Case Law Update: Canadian Broadcasting Corporation v Ontario

October 20, 2011

By Mark Edelstein

2011 ONCA 624 (Released October 5, 2011)

Civil Procedure Appeals Jurisdiction

The CBC applied to the Superior Court for an order granting it access to a video that was an exhibit in the appellant's bail hearing. The application judge granted the order and released the video to the CBC on the condition the appellant's face would be obscured. The appellant appealed the order.

The CBC brought a motion seeking to quash the appeal on the basis that the correct avenue to appeal was to the Supreme Court, with leave. The determinative issue was whether the appeal was a "criminal appeal" or a "civil appeal". The Court of Appeal would only have jurisdiction over a civil appeal.

The Court rejected the CBC's arguments, which were supported by the Crown, that this was a criminal appeal. The Court noted that the criminal proceedings had concluded (the appellant was ultimately acquitted). Therefore, the appellant's trial rights were not in play, the application would not impact a criminal proceeding, and the application was not made in the course of a criminal proceeding. Given these circumstances, the Court held the proceeding should not be characterized as criminal.

The Court noted that this motion appeared to be the first time an appellate court had expressly considered the characterization of this sort of appeal. The Court's holding appears to turn in part on two policy reasons:

1. There is a functional benefit of enhanced access to appellate review allowed by characterizing this as a civil appeal. If it were characterized as a criminal appeal, an appeal would be available only to the Supreme Court with leave; and
2. The characterization of the appeal as a civil appeal enhances the overall effectiveness of the administration of justice as it enables appeals to go through the entire judicial hierarchy, allowing these intermediate appeal courts to serve their function as well as the development of effective and cohesive jurisprudence.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035