

## **Should Beyond Borders Intervene in the Appeal of John Robin Sharpe? A Legal Opinion**

***By Simon Buck, Vancouver, BC***

I have reviewed a number of documents in regard to this appeal by Sharpe. It is my opinion that any application for intervenor status in this appeal is bound to fail and therefore should not be made.

This appeal began with a 684 application by Sharpe because Legal Aid had refused to fund the appeal for financial reasons. Legal Aid assessed the merits of the appeal and found two issues worth pursuing. These issues, or at least a variation thereof, were advanced by Sharpe in his factum. The second issue is whether the trial judge's instructions on comments made by the complainant about Sharpe's character were sufficient. This ground of appeal raises an issue about Sharpe's character and whether comments in the course of testimony attacked his character to such a degree that the trial was unfair. There is no merit to this ground.

The main ground of appeal is the first ground which raises an issue regarding the trial judge's instruction on consent.

As I understand this ground of appeal, Sharpe's complaint is very specific and narrowly focused on the jury instruction regarding consent. In particular, whether the trial judge should have instructed the jury to consider the relationship between Sharpe and the complainant at the time of the offences.

The Crown in its factum has argued that the law at the time allowed the jury to consider consent as a factor. I cannot see that Sharpe has addressed this argument in his factum.

In regard to the test for intervenor status, the Court of Appeal must consider a number of factors:

### **1. Nature of the issue before the court, and whether it is a public law issue.**

It is not a public law issue. As I see it, the issue is very narrow. It raises the appropriate considerations on the consent issue according to the applicable laws at the time. As the Crown notes, the law at the time permitted the jury to consider the relationship between the parties. Also, this issue, even if resolved in Sharpe's favour (which is extremely unlikely) would not result in a decision having any bearing on future cases on consent. The appeal is relevant to nothing more than Sharpe's propensity to find a platform for his warped way of thinking. I think that we should avoid getting on this platform. I suspect that he would like nothing more than for Beyond Borders to be at his appeal. It would validate his appeal. The media, if interested, would give it more attention because of our participation.

**2. Whether the case has a dimension which legitimately engages the interests of the intervenor and whether the intervenor has a perspective that may be of assistance to the court in the resolution of the issues.**

In a case such as this, the interests of the intervenor would have to be the age of consent. Our position, crudely put, is that it is too low. This appeal is not about the age of consent. It is about an instruction to the jury about the factors that can be considered on the issue of consent on a charge of gross indecency and indecent assault, according to the laws at the time, which have now changed.

**3. Whether the intervenor is likely to take the litigation away from the primary parties.**

Answer: No

For these reasons, I think that any application for intervenor status is bound to fail and that, for reasons of preserving credibility, we should apply in more suitable and worthwhile appeals.