

**ONTARIO COURT OF JUSTICE
(TORONTO REGION)**

BETWEEN:

HER MAJESTY THE QUEEN

Ex. Rel. City of Toronto

Appellant

- and -

ISIDRO ANDRADE

Respondent

- and -

HER MAJESTY THE QUEEN

Ex. Rel. City of Toronto

Appellant

- and -

RICHARD HARIRAJ

Respondent

***Heard:* 15 September 2010, 25 January 2011, 29 April 2011, 8 July 2011, 26 July 2011;**

***Judgment:* 15 September 2011**

(95 paras.)

On appeal against the Order of a Stay of Proceedings Imposed by Justice of the Peace L. Wichman, dated 2 July 2009, at 2700 Eglinton Avenue West, Toronto, Ontario, in respect of Isidro Andrade; On appeal against the Order of a Stay of Proceedings Imposed by Justice of the Peace D. Begley, dated 16 February 2010, at 2700 Eglinton Avenue West, Toronto, Ontario, in respect of Richard Hariraj.

George McQ. Bartlett for the Appellant

Paul Periti for the Respondents

Reasons for Judgment

Libman J.: -

Introduction

[1] Just like the time it takes to ready the fire-truck to leave the station, it takes time to schedule and prepare for trial when a defendant who is given a traffic ticket under Part I of the *Provincial Offences Act*¹ requests his/her day in court. The issue in this appeal case is how long should that time period be for these type of minor offences, so that it does not violate the defendant's right to be tried without unreasonable delay under s.11(b) of the *Charter of Rights and Freedom*.²

[2] The two Justices of the Peace who heard the defendants' *Charter* motions, respectively, concluded that the total periods of delay, 11 months and 28 days (Andrade) and 11 months and 4 days (Hariraj) were unreasonable, and stayed the proceedings as a result. The City of Toronto appeals on the basis that when the total period of delay is examined, including the intake period necessary for scheduling these two trials, a period of at least two months if not longer, there is no overall period of unreasonable delay; the Respondent/defendants counter that a very limited time for intake is warranted, even shorter than the two month period allowed by the Justices of the Peace, and that, in any event, the stays of proceedings should be upheld, given the lengthy period of delay in total, which they state is clearly unreasonable. Who is right and why? These are the thorny issues that I must consider.

The Andrade Proceedings

[3] Mr. Andrade was charged on 4 July 2008 with the *Highway Traffic Act*³ offences of "obstruct plate" and "unreasonable noise." He filed his notice of intention to appear for trial with the court on 1 August 2008; the notice of trial was issued and mailed to him on 3 November 2008. The date scheduled for trial was 2 July 2009.

[4] Several months prior to the trial date, on 23 January 2009, the defendant's legal representative, Mr. Periti, gave notice to the prosecutor's office that he was asserting that the defendant's rights under s.11(b) had been violated on account of the time that it took to bring the matter to trial. His written notice of application and constitutional issue asserted that "the limitations of resources by the City of Toronto" constituted the "primary cause of the delay."

[5] The *Charter* s.11(b) motion was heard on the trial date, 2 July 2009, by Justice of the Peace Wichman. The prosecutor took the position that two months should be deducted from the total period of delay due to "intake", that is, the time necessary to process and schedule the trial. This left a period of 9 months and 1 day from the time that the defendant filed his notice of intention to appear for trial. In the prosecutor's view, this period of delay was not constitutionally excessive.

[6] On behalf of the defendant, the paralegal practitioner argued that nothing his client had done contributed in any way to the delay, and that, generally speaking, a time frame of 8 to 10 months should be tolerated for bringing simple regulatory matters to trial. However, as the almost one year delay in this case was principally due to a lack of adequate resources in the jurisdiction, it was submitted that the charges should be stayed.

[7] Upon the completion of the parties' submissions, the trial judge delivered his ruling. He began by observing, "The whole purpose of the *Provincial Offences Act* was ... so that cases could be dealt with in a speedy way in which they could clear this up in a short period of time." He went on to hold:

... as far as I am concerned, anything past 10 months is certainly too long to be waiting to be dealt with, especially when you look at the nature of this charge. If it was a Careless Driving charge, where there was witnesses and other matters that involved more details, then I can appreciate the case going longer. But we are not dealing with Careless Driving, we are dealing with a summary conviction matter, in which it is strictly the officer and the defendant.

So, I am ruling that this is too long and the charge will be stayed.

The Hariraj Proceedings

[8] Mr. Hariraj was given a ticket for speeding on 12 March 2009. He filed his notice to appear in court four days later, on 16 March 2009. His notice of trial was issued and mailed to him on 20 May 2009. The trial was scheduled to take place on 16 February 2010.

[9] As in the case of Andrade, the paralegal practitioner served the prosecutor's office notice of application and constitutional issue well in advance of the trial date, on 26 June 2009. Once again, the basis for the *Charter* s.11(b) infringement was described as being due to the City of Toronto's "failure to allocate sufficient resources to the Court to administrate the interests of justice and dispense with these matters in a timely and expeditious manner through trial."

[10] The same prosecutor as in the Andrade case happened to be in court on the defendant's trial date before Justice of the Peace Begley. She made the same submission that two months should be reduced as "a reasonable intake period," and that a total period of delay of 8 to 10 months was thus "an entirely normal period of time for a matter to come to trial." As a result, she urged the Court to dismiss the defendant's *Charter* s.11(b) motion for a stay of proceedings.

[11] Mr. Periti was the trial agent on this occasion. He noted that whereas the defendant quickly applied for his trial date, the matter was scheduled for hearing 11 months later. He submitted that such matters should not take more than 9 months to come to trial, and "especially, not more than 11 months." The Court was therefore invited to stay the charges for unreasonable delay.

[12] The reasons of Justice of the Peace Begley granting the stay of proceedings are the following:

Yes. Very well, these matters are fairly simple. It should be done within six months. Certainly, no more than nine months. This has well passed that. I will agree with the defence. I will mark the matter stayed.

Position of the Parties

[13] The appellant's overriding argument is that there was no proper legal basis for a stay of proceedings to be imposed in each of these two cases due to a violation of the right to be tried without unreasonable delay, pursuant to s.11(b) of the *Charter of Rights and Freedoms*. In support of this position, he contends that the Justices erred, in effect, by imposing a limitation period by which these minor charges should be tried and heard, without engaging in a balancing of all the respective factors that inform the *Charter* s.11(b) unreasonable delay analysis, including the lack of actual prejudice to the defendants caused by any delay.

[14] It is further contended by the appellant that in assessing the period of constitutionally tolerable delay, consideration must be given to allowing for a reasonable "intake period" required to schedule the high volume of Part I ticket proceedings in the Toronto Region, as well as the permissible institutional delay in setting such trial dates. To this end, it has filed before the appeal court the affidavit of Susan Garossino, who is the manager of Court

Operations in the City of Toronto, and provided oral testimony as well. The appellant seeks to establish, based on this evidence, that a period of even more than two months is appropriate as reasonable intake time, namely, three months or more, and that, in any event, providing defendants in Toronto with trial dates within one year of being charged, is not excessive.

[15] The respondent argues, in turn, that the very short time lines that govern the *Provincial Offences Act* require that courts dispense speedy justice to those who wish to have their day in court before Justices of the Peace for minor offences, and thereby experience the justice system in Ontario first-hand in this manner. And unlike setting dates for the more serious Part III sworn information procedure, the respondent notes that where a person who is given a traffic ticket replies in writing a few days later that he/she intends to have a trial, there is nothing further to be done, other than to wait for trial date to be mailed out by court administration, with no input at all by the defendant as to when the trial should take place. Consequently, it is submitted, the date set for trial is a function exclusively of the institutional delay in the jurisdiction.

[16] With respect to the issue of an appropriate intake period, the respondent submits that a very short period of time should be allowed, namely, approximately one month. Conversely, the justices of the peace in these two cases permitted a period of two months to be considered as intake time. It is argued by the respondent, however, that the shorter one month period is appropriate, having regard to the operation of Regulation 200,⁴ which governs provincial offences proceedings. He arrives at this position by noting that the administration in the Toronto Region is required to set the matter down for trial immediately and without delay, and the court clerk obligated to mail the trial notice to the defendant within 14 days of the service of the offence notice, a period of which cannot exceed 28 days in any event.

Overview of Charter of Rights, s.11(b)

[17] The approach to interpreting s.11(b) of the *Charter of Rights* in relation to criminal offences has been the subject of much jurisprudence, and is well known. What is less clear, though, is how that analysis should apply to regulatory or public welfare offences, including those that are prosecuted as provincial offences under the Part I (ticket) proceedings.

[18] Section 11(b) of the *Charter* states that “any person charged with an offence has the right to be tried within a reasonable time”.

[19] The s.11(b) analysis is case specific. The issue is delay; it is not a forum for assigning blame for the underlying reasons of the delay. As the Ontario Court of Appeal stated in *R. v. Schertzer*, 2009 ONCA 742 at para. 5, leave to appeal refused, [2010] S.C.C.A. No. 3 (QL),

“s.11(b) is not the medium through which the quality of the prosecution’s performance is measured. Section 11(b) focuses exclusively on delay and the causes of that delay.”

[20] Prior to embarking upon the s.11(b) inquiry, the comments of Cromwell J. in *R. v. Godin*, 2009 SCC 26 at para. 18 are instructive: the framework of analysis with respect to unreasonable delay “often leads to minute examination of particular time periods and a host of factual questions concerning why certain delays occurred. It is important, however, not to lose sight of the forest for the trees while engaged in this detailed analysis.”

[21] The *Charter* s.11(b) right seeks to protect both the individual rights of an accused person, as well as the collective public interest, that is, the societal interests of the community.

[22] In *R. v. Morin*, [1992] 1 S.C.R. 771 at paras. 27-28, Sopinka J. commented that there are three aspects of the constitutionally protected individual rights which s.11(b) of the *Charter* seeks to protect: (1) the right to security of the person, by minimizing the anxiety, concern and stigma of exposure to criminal proceedings; (2) the right to liberty, by seeking to minimize the effect of pre-trial custody or restrictive bail conditions; and (3) the right to a fair trial, by ensuring that proceedings take place while evidence is available and fresh.

[23] There is also a societal interest in the hearing of trials without unreasonable delay. Trials which are held promptly “enjoy the confidence of the public” by ensuring that accused persons are treated humanely and fairly: *Morin*, para. 29. Moreover, there is a collective interest in bringing the accused to trial and dealt with according to law. As the seriousness of the offence increases, the societal demand that the accused be brought to trial increases as well: *Morin*, para. 30.

The Approach to Unreasonable Delay: Framework of Analysis

[24] According to the Supreme Court in *Morin*, the general approach to the determination as to whether the *Charter* s.11(b) right has been infringed “is not by the application of a mathematical or administrative formula but rather by a judicial determination balancing the interests which the section is designed to protect against factors which either inevitably lead to delay or are otherwise the cause of delay.” (para. 31)

[25] The factors which require consideration in the s.11(b) analysis are the following:

1. the length of the delay;
2. waiver of time periods;
3. the reasons for the delay, including
 - (a) inherent time requirements of the case;

- (b) actions of the accused;
- (c) actions of the Crown;
- (d) limits on institutional resources, and
- (e) other reasons for delay, and

4. prejudice to the accused.

[26] In *R. v. Donaldson*, 2010 ONCJ 3 at para. 19, Horkins J. made these observations as to the inter-relationship of the above factors:

The history of a typical criminal case will have two major chapters, firstly, the intake period leading up to the assignment of a trial date and, secondly, a period of time simply waiting for the scheduled trial date to arrive. A reasonable intake period is inherent in all cases and so considered neutral time in the s.11(b) analysis. Once the intake process is complete, the case is theoretically ready for trial. The backlog of other “ready” cases already set down for trial dictates the waiting time for a trial date. The period of time from the setting of the trial date to the earliest available trial date is systemic or institutional delay.

[27] As for the means by which a reasonable intake period is to be assessed and evaluated, as well as the amount of constitutionally tolerable institutional delay, the Supreme Court in *Morin* provided the following guideposts.

[28] With respect to the former, the Supreme Court observed that all offences have “certain inherent time requirements which inevitably lead to delay.” (*Morin*, para. 41). The complexity of the trial is one such requirement. All other factors being equal, the more complicated a case, the longer it will take for the parties to prepare for trial, and for the trial to be conducted. Thus, the inherent requirements of complex cases such as fraud or wiretap prosecutions with numerous documents or dozens of witnesses will justify longer periods of delay than for cases which are more simple and straightforward. Each case, in other words, brings about its unique set of facts which must be evaluated.

[29] Expanding on the concept of the intake period of time to be allowed for such cases, Justice Sopinka stated:

As well as the complexity of a case, there are inherent requirements which are common to almost all cases. The respondent has described such activities as “intake requirements”. Whatever one wishes to call these requirements, they

consist of activities such as retention of counsel, bail hearings, police and administration paperwork, disclosure, etc. All of these activities may or may not be necessary in a particular case but each takes some amount of time. As the number and complexity of these activities increase, so does the amount of delay that is reasonable. Equally, the fewer the activities which are necessary and the simpler the form each activity takes, the shorter should be the delay.” (para. 42)

[30] Although it was invited to do so, the Court in *Morin* declined to set an administrative guideline for such an intake period. The reason for this was that it felt unable to do so based on the record before it, and the fact that the length of time necessary for intake will be influenced by local practices and conditions, and should reflect this fact. However, it was observed that as evidence was adduced on s.11(b) applications within the particular region, it would become apparent that the intake period falls within a range of a certain number of weeks or months, and thus a de facto administrative guideline develop reflecting conditions in that region.

[31] As for institutional delay, Sopinka J. had this to say:

Institutional delay is the most common source of delay and the most difficult to reconcile with the dictates of s.11(b) of the *Charter*. It was the major source of the delay in *Askov*. As I have stated, this is the period that starts to run when the parties are ready for trial but the system cannot accommodate them. In Utopia this form of delay would be given zero tolerance. There, resources would be unlimited and their application would be administratively perfect so there would be no shortage of judges or courtrooms and essential court staff would always be available. Unfortunately, this is not the world in which s.11(b) was either conceived or in which it operates. We live in a country with a rapidly growing population in many regions and in which resources are limited. In applying s.11(b) account must be taken of this fact of life. (para. 47)

[32] The Supreme Court went on to provide an administrative guideline for institutional delay for provincial trial courts, cautioning that a guideline is not to be treated as “a fixed limitation period”. (para. 52) However, the establishment of a guideline was stated to serve two purposes: (1) it recognizes that there is a limit to the delay that can be tolerated due to limitations of resources; and (2) it prevents individual s.11(b) applications from being made into trials of the government’s budgetary policy as it relates to the administration of justice. The Court’s conclusion was to suggest a period of institutional delay of between 8 to 10 months as a guide to Provincial Courts.

[33] The *Morin* decision is fast approaching its 20th anniversary. While it has been suggested by some that its guideline of constitutionally tolerable systemic delay has become “outdated reference points”, given the quarter century that the government has had to improve upon the “systemic deficiencies which undermine the constitutional rights protected by section 11(b) of the *Charter*” (*Donaldson*, para, 21), it must nevertheless be the starting point for examining the issue of unreasonable delay for provincial offences.

Provincial Offences Part I Proceedings and the Charter s.11(b) right

[34] In terms of the application of the *Charter* right to be tried without unreasonable delay to minor offences, there are two competing approaches to consider. On one hand, the short time lines under Part I of the *Provincial Offences Act* serve to place a premium on speedy justice: the defendant, as noted previously, has 15 days to respond to his/her ticket; additionally he/she is given 15 days to appear before a justice upon becoming aware of a conviction without a hearing, in order to seek a re-opening and have a trial on the merits (s.11(1)); a certificate of offence issued by a police officer must be filed in the court office “as soon as is practicable”, a period of which is not to be later than seven days after service of the offence notice or summons (s.4); and the clerk of the court is required to provide notice of trial to the defendant and prosecutor “as soon as is practicable” following the defendant’s filing of his/her notice to appear in court for trial (s.5(2)).

[35] At the same time, it must be acknowledged that the provincial offences court is the forum in which most persons in this province will experience the justice system in action. It is truly the “peoples’ court”. As such, it is an extremely busy place. Chief Justice Bonkalo in her speech at the Opening of the Courts in September, 2010 noted that whereas 600,000 criminal charges had been brought before the Ontario Court of Justice, there were 2 million provincial offence and highway traffic charges.⁵ Moreover, those infractions under Part I of the Act consist of matters for which the defendant may receive, at most, a fine, and the accompanying stigma of conviction, if any, is minor; the absence of prejudice, caused by the delay waiting for trial, is also a relevant factor.

[36] Many of the cases relied upon by the appellant and respondent before me reflect these competing tensions. In some, it is held that as speedy justice is the hallmark of the *Provincial Offences Act*, periods of delay, especially lengthy systemic delay, must be subjected to close scrutiny, thus frequently resulting in a stay of proceedings being granted due to a violation of the s.11(b) right: see, for example, *R. v. Mastroianni*, [2000] O.J. No. 3227 (QL) (C.J.); *R. v. Farokhshadfar*, [2001] O.J. No. 6015 (QL) (C.J.); *R. v. Omarzadah*, [2003] O.J. No. 5712 (QL) (C.J.), leave to appeal refused, [2004] O.J. No. 2212 (QL) (C.A.); *R. v. Rowan*, 2004 ONCJ 153; *R. v. Vellone*, 2009 ONCJ 150, leave to appeal granted, [2009] O.J. No. 1607 (QL) (C.A.); *Brampton (City) v. Singh*, 2007 CarswellOnt 5449 (O.C.J.); *R. v. Piskun*, [2008] O.J. No. 3705

(C.J.). Conversely, delays approaching, and in some cases exceeding, one year have been found not to breach the *Charter* s.11(b) right, particularly where the court has emphasized the minor nature of the charge, and the absence of any prejudice and/or stigma: see, for example, *R. v. DeCaro*, [2000] O.J. No. 3166 (QL) (C.J.); *R. v. Hussain*, [2005] O.J. No. 158 (QL) (C.J.); *R. v. Berbatiotis*, 2007 ONCJ 561; *R. v. Craig*, [2008] O.J. No. 4750 (QL) (C.J.); *R. v. Delvecchio*, 2008 ONCJ 511.

[37] While these unreasonable delay decisions dot the provincial offences landscape, there are *Charter* s.11(b) pronouncements of more general application to regulatory offences. The Supreme Court pointed out in *R. v. C.I.P. Inc.*, [1992] 1 S.C.R. 843 that the *Charter of Rights* does not distinguish between types of offences. In other words, there is no basis for an argument that merely because the accused is charged with a regulatory offence, the allowable time frame for bringing one to trial should be greater than it would be in other circumstances.

[38] Applying the *C.I.P.* decision in an *Occupational Health and Safety Act*⁶ prosecution, *Ontario (Ministry of Labour) v. Vollick*, 2010 ONSC 6746, where the trial judge granted a stay of proceedings due to unreasonable delay, Murray J. stated the following in dismissing the Crown's appeal:

The allowable time frame for bringing an accused charged with a regulatory offence to trial is the same as it would be in the case of a *Criminal Code* offence. The interest of an accused in the availability and reliability of substantiating evidence exists irrespective of the nature of the offence: see *R. v. C.I.P. Inc.*, [1992] 1 S.C.R. 843. (para. 61)

[39] Finally, in the *Omarzadah* case, Justice Doherty declined to grant leave to appeal against the decision of the provincial offences appeal court which imposed a stay of proceedings for unreasonable delay where it had taken 14 months for the defendant's speeding charge to be heard. In the course of doing so, he had this to say:

The applicant is concerned that the reasons below will be taken as establishing a six-month guideline for prosecutions under Part I of the POA. The applicant is concerned that delays beyond six months will be treated as presumptively unconstitutional. The reasons below should not be read as authority for that proposition. The analysis of s.11(b) provided in *R. v. Morin*, [1992] 1 S.C.R. 771 applies to POA prosecutions. To the extent that guidelines are helpful where s.11(b) claims are advanced in prosecutions under Part I of the POA, the *R. v. Morin* summary conviction guidelines should govern. Even those guidelines, however, should not necessarily be strictly applied. It must be acknowledged

that any “stigma” arising out of the delay in the trial of charges like speeding is virtually non-existent. In allocating finite resources, the state is entitled to give some priority to the speedy resolution of more serious allegations. (para. 3)

What is a Reasonable Intake Period in the Toronto Region?

[40] The intake period, as explained in *Morin*, is part of the inherent time requirements of the case. In the context of a Part I provincial offences prosecution, this consists almost entirely of administrative procedures in the municipality as it relates to scheduling a trial date, given that once the defendant has acted within 15 days of receiving his/her ticket and filed the notice of intention to appear in court, there is nothing further for the defendant to do other than to await receipt in the mail of the trial notice, indicating the date selected by the municipality for his/her day in court.

[41] In *Omarzadah*, the issue of the applicability of an intake period for Part I provincial offences proceedings was not raised. Justice Shamai therefore dealt with the unreasonable delay argument solely on the basis that the defendant was given his notice of trial within six weeks of being charged, and the trial date that followed was approximately 14 months after the offence date.

[42] It appears, then, that the notion of an intake period in the Toronto Region was first considered in the *Hussain* decision where Justice Casey held that a period of “a little less than two months, could be found to be a reasonable intake period, and as such an inherent time period required for the case.” (para. 6) It was thus the position of the trial prosecutor before Justices Wichman and Begley that two months should be considered as an intake period.

[43] I find it instructive, at the outset, to examine the means by which Casey J. arrived at this approximate two month range as intake time or an inherent time requirement period. Mr. Hussain was charged with failing to stop at a red light, and not being in possession of his insurance card. The offence date was 24 June 2003. The next day, he filed a notice of intention to appear for trial with the Provincial Offences office of the Ontario Court of Justice. On 21 August 2003, a notice of trial was sent to him, indicating that his trial would take place on 9 June 2004. It is thus apparent that Justice Casey arrived at the determination of approximately two months as intake time by simply calculating the time it took from the defendant’s filing his notice of intention to appear for trial (25 June 2003) until the time he was sent his notice of trial (21 August 2003), a period of slightly less than two months.

[44] However, using these two temporal points of reference in order to measure intake time, that is, from the date of filing notice to appear in court by the defendant, to the date of the issuance of the trial notice by court administration, is a mechanism that can produce widely varying results. It is therefore not particularly well suited, in my respectful opinion, to setting

or calculating a reasonable intake period. Let me illustrate with a number of examples, including the appeal cases before me:

Andrade -- 3 months, 2 days (filing of notice of intention to appear for trial, 1 August 2008; issuance of notice of trial, 3 November 2008)

Hariraj -- 2 months, 4 days (filing of notice of intention to appear for trial, 16 March 2009; issuance of notice of trial, 20 May 2009)

[45] The other cases relied on by the parties produce similar divergent results. These differences in time periods may be seen from region to region, and within the region itself. Again, let me furnish some illustrations from the case-law presented to me:

Singh -- 22 days (offence date, 24 October 2005; issuance of notice of trial, 15 November 2005)⁷ [Brampton]

Piskun -- 1 day (filing of notice of intention to appear for trial, 18 November 2005; issuance of notice of trial, 18 November 2005) [Brampton]

Vellone -- 3 months, 2 days (filing of notice of intention to appear for trial, 22 June 2007; issuance of notice of trial, 24 September 2007) [Newmarket]

Omarzadah -- 1 month, 15 days (offence date, 18 September 2001; issuance of notice of trial, 31 October 2001) [Toronto]

Farokhshadfar -- 10 months, 9 days (filing of notice of intention to appear for trial, 1 October 1999; issuance of notice of trial, 10 August 2000) [Toronto]

DeCaro -- 1 month, 27 days (filing of notice of intention to appear for trial, 1 March 1999; issuance of notice of trial, 28 April 1999) [Newmarket]

Craig -- 2 months, 11 days (offence date, 15 February 2006; issuance of notice of trial, 26 April 2006) [Orangeville]

Delvecchio -- 5 months, 16 days (offence date, 6 June 2005; issuance of notice of trial, 22 November 2005) [Newmarket]

Rowan -- 3 months, 29 days (filing of notice of intention to appear for trial, 23 April 2003; issuance of notice of trial, 22 August 2003) [Toronto]

[46] In other instances, the period of time involved in issuing the notice of trial by court administration has led to challenges to the issuance process itself, given the requirement in

the statute that the trial notice be issued as soon as is practicable: see, for example, *R. v. Theosanamoorthy*, [1997] O.J. No. 6175 (QL) (Prov. Div.) – 1 month, 25 days (filing of notice to appear for trial, 14 January 1997; issuance of notice of trial, 11 March 1997) [Toronto]; *R. v. Kwoon*, [1999] O.T.C. 238 (S.C.J.) – 3 months (filing of notice of intention to appear for trial, 7 May 1998; issuance of notice of trial, 6 August 1998) [Newmarket]; *R. v. Gwynne*, [2001] O.J. No. 331 (QL) (C.J.) – 26 days (filing of notice of intention to appear for trial, 7 April 2000; issuance of notice of trial, 3 May 2000) [Toronto]; *Brampton (City) v. Dilloo* (2008), 90 O.R. (3d) 149 (S.C.J.) – 7 months, 13 days (filing of notice of intention to appear for trial, 12 October 2006; issuance of notice of trial, 25 May 2007) [Brampton].

[47] These cases clearly illustrate that an intake period measured by the time it takes for the defendant to provide notice of his/her intention to appear in court, until the issuance of the trial notice by courts administration, may be as little as the same day or a few weeks, or as much as 7 or 10 months. It does not provide, therefore, an accurate barometer of intake time for provincial offences proceedings under Part I of the legislation. With respect to Justice Casey's decision in *Hussain*, I wish to note that he did not have the benefit of the evidentiary foundation adduced before me, a factor I have taken into account in respectfully not following his assessment of an appropriate intake period.

Evidence Adduced on Appeal as to Intake Period in the Toronto Region

[48] The appellant and respondent have each sought to establish before me other ways by which a reasonable intake period should be measured. According to the former, the two month period allowed by Justice Casey in *Hussain*, and of which it relied upon before Justices of the Peace Wichman and Begley in the instant cases, is not, in fact, long enough; the latter, in turn, argues for an intake period that is less than half than this two month period. I will now examine the arguments brought forward in support of each of these positions.

[49] According to the appellant, and the evidence it has tendered on appeal from Ms. Garossino, Manager Court Operations, the time it takes to process and set trial dates is primarily a function of the availability of the charging provincial offences officer. Indeed, the higher the volume of tickets written by the officer (a "high-writer" as opposed to a "low-writer"), the sooner the trial date given to the defendant. For this reason, Andrade's trial date was scheduled later than that for Hariraj, as the officer who gave Andrade his ticket was "a low volume officer [and] would therefore be late in the scheduling sequence." (Affidavit, para. 20) No consideration is given, though, to the availability of the defendant for the chosen trial date, or any input or interest as to trial time he or she may have, including unavailability due to previous commitments or obligations, eg., doctor's appointment, school exam, business meeting, vacation .

[50] Ms. Garossino asserts that the Toronto *Provincial Offences Act* courts handle the highest volume of such charges of any municipally administered courts in Ontario. Hence, it is necessary to schedule those matters that go to trial in a manner that “makes best of the time that officers, particularly for those who issue a large number of certificates of offence are available for court, and in a way that accommodates the fact that such officers may also be required in other courts.” (Affidavit, paras. 17 and 18)

[51] The practices and procedures followed by the City of Toronto in scheduling trial dates include *not* scheduling trials requested in relation to Part I certificates of offence issued in any given month until at least 45 days after the end of that month, on the basis that this increases the likelihood that most trial requests related to those certificates of offence will have been received by the court office. (Affidavit, para. 20) After 44 days from the offence date, certificates of offence which have not been paid out of court and for which a trial request had not been received are placed on a fail to respond court docket; notices of intention to appear are thereby accepted for filing up to the 44th day from the offence date, whereas a notice of intention to appear will not be accepted once the certificate of offence appears on the fail to respond docket.

[52] In cross-examination on her affidavit, Ms. Garossino explained that when the defendant does file a request and a scheduling for trial, “there’s some processing administration going on. It doesn’t just sit there and nothing happens to it. We process it so that come the grace period being over, it comes out and starts to get scheduled.” (Transcript of Evidence on Appeal, 25 January 2011, pp.21-22).

[53] As for the respondents, it is argued that the inherent time requirements under the *Provincial Offences Act*, including an intake period, must of necessity be quite brief. They point out that under s.4, the police paperwork, the certificate of offence, must be filed in the office of the court as soon as is practicable after service of the offence notice or summons; Regulation 200, s.11(1), in turn, prohibits the clerk of the court from accepting for filing a certificate of offence more than seven days after the day on which the offence notice or summons was served, unless time has been extended by the court. Given that the administration is required to set a trial date for a matter as soon as is practicable upon receipt of the notice of intention to appear being filed by the defendant, a matter should be committed to trial within 14 days of the service of the offence notice.

Conclusions as to Intake Period

[54] I am respectfully of the view, in assessing the merits of the positions put forward by both the appellant and the respondent as to a reasonable intake period, that each fails to fully take into account the legitimate concerns of the other, that is, the high volume of trial

requests processed by the municipality in scheduling trials, and the defendant's right to have a trial promptly scheduled with some consideration as to his/her individual interest and availability in the date and time selected for the proceedings.

[55] That said, I see no reason why a reasonable intake period for a traffic ticket, as a general rule, should exceed a period of between 30-45 days. An intake period in the lesser range of 30 days will be appropriate where the defendant acts promptly within the 15 day window to respond to his/her ticket and files the notice of intention to appear in court for trial, and the officer, in turn, files the certificate of offence or offence notice expeditiously in the court office, thereby allowing court administration to have all the necessary documentation within days of the issuance of the ticket. An intake period in the outer range of 45 days will be appropriate where the defendant does not act until the latter part of the 15 day window to respond to his/her ticket and file the notice of intention to appear in court for trial, or the officer does not file with dispatch the certificate of offence or offence notice in the court office, thereby causing court administration to wait a lengthier period before having all the necessary documentation to schedule a trial date.

[56] In either case, an intake period or inherent time requirement range of 30 to 45 days should result in provincial offences trials for minor offences being scheduled within approximately two months of the offence date. I note that this period is consistent with cases in the Toronto Region such as *Omarzadah* (trial scheduled 45 days from offence date) and *Hussain* (trial scheduled in less than two months from offence date).

[57] An intake period of this duration promotes the scheduling of trials in a manner that will enhance the likelihood of the overall period of delay to the actual trial date being a reasonable one, rather than one that is not. It also provides certainty as to the scope of reasonable intake time, and eliminates the arbitrariness of simply calculating the period of time from the filing of the notice of intention to appear until the date the trial notice is issued, a practice that produces a time period for intake that is uncertain and unpredictable, and may in fact range, as the cases demonstrate, from one day to more than 10 months.

[58] Moreover, an intake period of 30 to 45 days for the most minor of provincial offences, that is, those prosecuted under Part I as ticket infractions, is also consistent, in my opinion, with the intent of the legislation, a very important aspect of which is ready and efficient access to the administration of justice. I am thus unable, with respect, to accept the appellant's position which places a premium on bureaucratic procedures, with no regard for either the defendant's own interests and input as to trial scheduling, or the abbreviated time periods mandated in the legislation. While the City may consider that if a defendant finds the date or time of day given for trial to be inconvenient, an adjournment request can be arranged, this is not the approach adopted for police witnesses, and I do not therefore

consider this to be an even-handed way of scheduling trials, particularly for the growing number of unrepresented defendants who may lack the means or understanding of how to change their assigned trial date, and are given no instructions in the notice of trial as to how to do so. Stated shortly, a delay caused by an unfair practice or procedure cannot be reasonable within the meaning of s.11(b) of the *Charter*.

[59] On the other hand, a more extended intake period approaching 60 days might well be appropriate where the defendant is given the ability to indicate on the notice of intention to appear for trial, or otherwise at the outset, and have taken into consideration, dates or times when he or she could, or could not, be available for trial. Most other trials in this province for criminal or quasi-criminal offences are scheduled in this manner, that is, with the defendant's availability for trial taken into account, including provincial offences which are prosecuted by the sworn information procedure under Part III. In this way, a single parent could request a trial date on a day of the week when childcare is available, or a student could ask for a trial in a period when school is not in session, or a worker on a day, or portion of the day, when he/she is able to attend court and be excused from work.

[60] An intake period that incorporates these features would provide a means of scheduling trials in a way that takes all of the key parties legitimate interests into account, including police witnesses and court administration, while being consistent with the purpose of the *Provincial Offences Act*, which in the view of the Ontario Law Commission, should be to "advance a procedure for the trial or resolution of provincial offence cases that is: (a) proportionate to the complexity and seriousness of the provincial offence; (b) efficient; (c) fair; (d) accessible; (e) responsive to the offence-creating statute's objective; and (f) reflective of the distinction between provincial offences and criminal offences."⁸ It would also doubtlessly promote the attendance of accused persons on dates that are scheduled for trials, given their ability to have a say in the trial scheduling process.

[61] Finally, there may also be cases where an intake period of 60 days or more may be appropriate, particularly where the defendant's actions result in delaying the processing and scheduling of his/her trial date. For example, where the defendant takes more than 15 days to file the notice of intention to appear in court, such that the matter qualifies for being dealt with on the deemed not to dispute docket, but is nevertheless scheduled for trial, an extended intake period beyond 45 days might well be justified. Likewise, if the defendant has been convicted in his/her absence but the matter is reopened by a justice and a new trial date provided, the municipality may require additional time to re-process and schedule the defendant's trial.

[62] By way of summary, I consider that a reasonable intake period for Part I provincial offences matters in the Toronto Region is one that is between 30 to 45 days. Given that the

defendant has 15 days to respond to his/her ticket or certificate of offence and file the notice of intention to appear in court for trial, and court administration a period of 30 to 45 days to process and respond to the trial request, the scheduling of trial matters should generally occur within 60 days of the offence date.

What is a Reasonable Period of Systemic or Institutional Delay in the Toronto Region?

[63] Unlike the issue of a reasonable intake period, the amount of constitutionally tolerable systemic or institutional delay has been considered in relation to provincial offences. I therefore consider that this issue has essentially been resolved by the Court of Appeal in the *Omarzadah* decision.

[64] According to Justice Doherty, the *Morin* summary conviction guidelines govern, though not strictly, thereby mandating a period of 8 to 10 months for provincial offences trials to be heard in the Ontario Court of Justice. However, unlike trial matters for summary conviction criminal offences, provincial offences Part I proceedings require no court appearance before the matter is set down for trial, or other routine features involved in scheduling criminal trials, such as retaining counsel or applying for legal aid, preparing and providing disclosure, attending a pre-trial meeting with the Crown or judge, or consulting with the trial coordinator to arrange a trial date. In essence, once the defendant is given his/her traffic ticket, there is little further for either the defendant or police officer to do, other than file their respective paperwork and wait for a trial date to be scheduled. Neither is there anything that must be done by the prosecutor in order for the process to proceed. As a result, the lengthiest portion of the time it takes for a Part I provincial offences proceeding to be heard will ordinarily consist of systemic or institutional delay.

Evidence Adduced on Appeal as to Systemic or Institutional Delay in the Toronto Region

[65] The appellant called evidence from its Manager Court Operations, Ms. Garossino, explaining the various loading patterns and court availability requirements by which it is governed. In essence, court availability is approved according to a court master plan; thereafter matters are scheduled within the available slots for minor provincial offences proceedings, accident matters, parking, and so on. The goal remains, though, the scheduling of trials within a one year period. However, it will be recalled that as a matter of practice and policy, trials are not scheduled in the Toronto Region for Part I certificates of offence issued in a given month until at least 45 days after the end of that month, thus resulting in a period of several months elapsing before a notice of trial is processed and sent to defendants, indicating the selected hearing date, a policy which applies even to those persons who file their trial request immediately, or well within the 15 day period mandated by the legislation.

[66] To return to the instant cases, the following systemic or institutional delay arises as a result of this scheduling policy:

Andrade --8 months (notice of trial issued by municipality, 3 November 2008; trial date: 2 July 2009)

Hariraj -- 9 months (notice of trial issued by municipality, 20 May 2009; trial date: 16 February 2010)

[67] However, the above amounts of institutional delay must be viewed in relation to the time period that the municipality took, for policy reasons, to schedule these trials: in the case of Andrade, more than three months, and for Hariraj, in excess of two months, thereby resulting in more than a total of 11 months delay in both cases, that is, from the time of the offence date until trial. Such additional delay in processing and scheduling the hearing of trials is most properly regarded as institutional delay, as opposed to delay for which the prosecution bears responsibility, given that the prosecutor also has no input in the manner in which such proceedings are processed and arranged, and is likewise notified of the trial date through the issuance of the notice of trial by court administration.

[68] In cross-examination, Ms. Garossino acknowledged that it was important for persons who request trials to be given “a timely time to trial” and “the quickest possible court date based on offence date.” (Transcript of Evidence on Appeal, 25 January 2011, p.75) She went on to state:

Because we schedule trials in a timely manner. We .. we keep our time to trials down within a year from the offence date, based on court availability, availability of Justices of the Peace, and all the other factors that I’ve described previously in my affidavit. That’s .. it is .. we have a very large court, and we schedule trials very efficiently for the size and volumes, and very fairly.”

Conclusions as to Systemic or Institutional Delay Period

[69] While the intention of the Manager Court Operations is to provide trial dates within a one year period, the administrative guideline for trials in the Provincial Courts is notably less than that, being 8 to 10 months, a time period that is well known, and has been set out by the Supreme Court in *Morin*, and the Ontario Court of Appeal in *Omarzadah* for many years, that is, well before the scheduling of the trials of the respondents in the cases before me.

[70] This administrative guideline range for institutional delay does not operate as a limitation period. It is also “subject to deviations by reason of the prejudice or absence of prejudice”: *R. v. Sharma*, [1992] 1 S.C.R. 814 at para. 27, per Sopinka J.

[71] In *R. v. Meisner*, [2003] O.T.C. 436 (S.C.J.) at para 74, Hill J. observed that given the government has had more than a “decade of experience in dealing with trial delay in Peel,” the period of institutional delay which was “constitutionally tolerable” for a trial in the Ontario Court of Justice should be about 8 months. He added that such delay should not generally exceed about 9 months.

[72] *Meisner*, a drinking and driving prosecution, has been applied to like cases in this jurisdiction, including in this courthouse: see *R. v. Lima*, 2006 ONCJ 144, and more recently *R. v. De Paola*, 2010 ONCJ 260, *R. v. Bhatti*, 2010 ONCJ 355, *R. v. Salehji*, [2010] O.J. No. 4899 (QL) (C.J.).

[73] Using this period of institutional delay as a guideline for a summary conviction criminal trial in this Provincial Court building, a period of 8 to 9 months is therefore the constitutionally tolerable limit of systemic or institutional delay. I see no reason to adjust this administrative range upward or downward for the provincial offences charges in question, having regard to the fact that they consist, essentially, of a one witness prosecution, and involve simple and uncomplicated issues, namely, whether or not the prosecution can establish that Mr. Andrade drove his vehicle with an obstructed plate and made unnecessary noise, and that Mr. Hariraj was speeding, the latter being an absolute liability offence for which no defence of lack of fault may be raised. In the words of Justice Bellefontaine in *Durham (Regional Municipality) v. Saeed*, 2010 ONCJ 251 at para. 2, these kinds of trials “are scheduled for and usually completed to the conclusion of judgment and sentencing in 15 minutes.” The amount of permissible institutional or systemic delay for such cases should reflect this fact.

Application of Law to Facts of Cases on Appeal

[74] The reasons of Justices of the Peace Wichman and Begley staying the proceedings against each of the defendants for unreasonable delay are properly the subject of review before me, given this Court’s broad powers in relation to Part I appeal cases, as well as the fact that evidence has been tendered on appeal with respect to the setting and scheduling of trial dates in the Toronto Region, evidence that was not available at the trial proceedings. It is not therefore strictly necessary for me to comment on the approach or reasons given by the two Justices of the Peace. Indeed, their reasons were responsive to the submissions placed before them. Instead, I propose to set out each of the *Charter* s.11(b) factors as stated in *Morin*, with particular reference to the application of an intake period and systemic or institutional delay, as I have indicated above.

Length of the Delay

[75] The first factor is the length of the delay. In each case it is more than 11 months. Such a delay for minor Part I provincial offences proceedings is *prima facie* excessive, and therefore warrants further scrutiny.

Waiver of Time Periods

[76] The second factor is waiver of time periods. There is none. Indeed, the defendant in each case gave timely written notice of his intention to assert his *Charter* s.11(b) right, several months in advance of the scheduled trial date.

Reasons for Delay:

Inherent Time Requirements of Case

[77] Reasons for the delay is the third factor. This includes, in turn, examination of a number of considerations, including: inherent time requirements of the case, actions of the accused, actions of the crown, limits on institutional resources, and other reasons for delay. I will address each of these matters below.

[78] Inherent time requirements of the case are the first of these series of considerations. For the reasons I have endeavoured to explain, I consider that, as a general rule, a reasonable intake period in the Toronto Region is 30 to 45 days. In the case of Andrade, the notice of intention to appear in court was not filed until almost one month after the offence date; the notice of trial date was issued 3 months later. In these circumstances, I consider that the municipality was entitled to take a lengthier period of time to process and issue the defendant's trial date, although not as long as it took, since it based its method of trial scheduling primarily on the charging practices (a "low writer") of the ticketing officer, and not the delay in the defendant's late trial request. However, given that the defendant was permitted to request his trial date after the expiry of the 15 days legislated period, and then took nearly 15 additional days to do so, the municipality should be allowed a correspondingly longer period of time to process this late trial request. In the result, I attribute 60 days as being a reasonable period of intake time in Mr. Andrade's case.

[79] As for Hariraj, his notice of intention to appear in court was filed four days after the offence date. A period of over two months elapsed before his notice of trial was issued. I am of the view that a reasonable period of intake in these circumstances is no more than 30 days, given that there were no additional factors justifying a longer period of administrative delay. That is, once the defendant's traffic ticket for speeding was issued to him, and he

promptly responded to it, the matter was ready to proceed directly to trial, subject only to its being processed by court administration.

Actions of the Accused; Actions of the Prosecution

[80] The next two considerations are actions of the accused and actions of the prosecution. I have already noted that Andrade delayed acting on his ticket for almost 30 days, a period of which should be attributed to him in the delay calculus. Beyond this, there were no further periods of delay he caused. Indeed, the respondent provided timely notice of his unreasonable delay application, and argued it on the scheduled trial date. The prosecutor, in turn, caused no delay in the proceedings.

[81] In the case of Hariraj, he responded within days of being charged with his offence, and caused no further period of delay thereafter. This four day period of delay is the only time period for which he is responsible. Timely notice was provided of his *Charter* s.11(b) application, and it too was argued on the scheduled trial date. Neither was any period of delay caused by the prosecutor.

Limits on Institutional Resources

[82] Limits on institutional resources is the major cause of delay in both cases, and indeed in most provincial offences Part I proceedings. As stated in *Morin*, institutional delay is “the most common source of delay and the most difficult to reconcile with the dictates of s.11(b) of the *Charter*.” (para. 47) It is defined as the time period where the parties are ready for trial, but the system cannot accommodate them. Systemic or institutional delays are attributable to the Crown in that such delay cannot be relied upon by the Crown to excuse delay; given the fundamental importance of the right to be tried within a reasonable period, the lack of institutional resources cannot be used to justify unreasonable delays.

[83] From the time of the issuance of the notice of trial for Andrade, a period of 8 months elapsed. However, as I have noted, it took three months for the trial notice to be issued by court administration, thus resulting in a total period of systemic or institutional delay of 9 months. As for Mr Hariraj, the period of institutional delay from the date of issuance of his trial notice was 9 months. There is, in addition, a further period of one month of institutional delay, caused by court administration in processing and issuing this defendant’s trial request, thereby resulting in a total period of 10 months systemic or institutional delay.

[84] As noted earlier, the Supreme Court in *Morin* provided an administrative guideline for institutional delay as being between 8 and 10 months with respect to bringing a matter to trial in the Provincial Court. (para. 55) Justice Doherty extended this guideline to Part I provincial offences proceedings in *Omarzadah*, while noting that it does not apply as strictly

as it does for criminal matters. I consider, for the reasons I have set out, that the constitutionally tolerable period of institutional or systemic delay in the Toronto Region for the type of minor Part I provincial offences cases in question as being between 8 and 9 months. Thus, the total amount of institutional delay in these cases of 9 months (Andrade) and 10 months (Hariraj) falls, respectively, at the upper limit and beyond this administrative guideline.

Other Reasons for Delay

[85] There are no other reasons for delay in these two cases.

Prejudice to the Accused

[86] The final factor for consideration is whether or not the defendant has suffered prejudice on account of the amount of delay involved in the case. Cory J. in *R. v. Askov*, [1990] 2 S.C.R. 1199 explained that “a very long and unreasonable delay” will give rise to an inference of prejudice to the accused; however, it is open to the Crown to demonstrate that the accused has not in fact suffered prejudice. (para. 67) Apart from such inferred prejudice, it is open to either party to rely on evidence to either show prejudice, or dispel such a finding: see *Morin*, para. 63.

[87] In these cases, although it was submitted by the respondent that prejudice should be presumed given the length of the delays in each case, no evidence was put forward before the Justices of the Peace on this issue. That is, there was no evidence in either affidavit form or in oral testimony on the issue of prejudice. Indeed, as noted by the appellant, neither Mr. Andrade nor Mr. Hariraj attended in person at their trials, as was their right, but this had the effect of precluding the Justices from finding that actual prejudice was demonstrated by the defendants, on account of the record before them. I therefore consider there is no evidence of prejudice to the accused due to the period of delay it took to bring these cases to trial.

Summary of Periods of Delay

[88] With respect to Andrade, the total period of delay from the time of being charged until his trial date is 11 months and 28 days. Of this period I apportion the delay as follows:

- * Inherent time requirements of case: 2 months
- * Accused Delay: 1 month
- * Institutional Delay: 9 months

[89] With respect to Hariraj, the total period of delay from the time of being charged until his trial date is 11 months and 4 days. Of this period I apportion the delay as follows:

- * Inherent time requirements of case: 1 month
- * Accused delay: 4 days
- * Institutional Delay: 10 months

Weighing Competing Interests

[90] The final step in the s.11(b) analysis is to weigh the competing interests between the state and the accused. As McLachlin J. (as she was then) stated at para. 87 in *Morin*, “The task of a judge in deciding whether proceedings against the accused should be stayed is to balance the societal interest in seeing that persons charged with offences are brought to trial against the accused’s interest in prompt adjudication. In the final analysis, the judge, before staying charges, must be satisfied that the interest of the accused and society in a prompt trial outweighs the interest of society in bringing the accused to trial.”

[91] The *Highway Traffic Act* forms an important part of the public welfare legislative fabric in this province by which motorists and other users of the roadway are governed. Indeed, the rules of the road are set out for the protection of society as a whole. Not surprisingly, this statute gives rise to a very substantial number of cases before the Ontario Court of Justice. There is thus a societal interest in the effective and vigorous prosecution of highway traffic offences, particularly where harm or the potential for harm is present.

[92] On the other hand, there is nothing particularly complex about the charges against these two defendants. Highway traffic infractions are not impervious to *Charter* s.11(b) scrutiny. The defendants exercised their respective options to have trials, and provided timely notice of their intention to rely on the right to be tried without unreasonable delay. The processing and scheduling of their trial dates was based on an unreasonable administrative procedure, emphasizing the charging practices of the officers who issued the tickets, and their availability for trial only, as opposed to any consideration of the interests of the defendants; there has also been significant institutional delay which exceeds the administrative guideline period. Despite there being no evidence of prejudice to the defendants, as will not infrequently be the case in Part I provincial offences proceedings, this must be balanced by the public interest in a fair, efficient and timely process for bringing such matters to trial.

[93] It is therefore my respectful opinion, having regard to the totality of the circumstances, that the interest of the defendants and society in a prompt trial outweighs the societal interest in bringing the accused persons to trial.

Conclusion

[94] Courts, as Horkins J. observed in *Donaldson* at para 53, have a “constitutional mandate” to stay charges where an accused’s protected rights under s.11(b) are violated. Having balanced the competing interests to the best of my ability, I conclude, as did Justices of the Peace Wichman and Begley, that the defendants’ s.11(b) *Charter* rights have been violated, and that the stays of proceedings imposed at trial due to unreasonable delay were warranted.

[95] The appeals must therefore be dismissed.

¹ *Provincial Offences Act*, R.S.O. 1990, c.P.33.

² *Canadian Charter of Rights and Freedoms*, Schedule B, The Constitution Act, 1982.

³ *Highway Traffic Act*, R.S.O. 1990, c.H.8.

⁴ *Rules of the Ontario Court (Provincial Division) in Provincial Offences Proceedings*, R.R.O. 1990, Reg. 200.

⁵ Opening of the Courts, 14 September 2010, Speech of Chief Justice Annemarie Bonkalo.

⁶ R.S.O. 1990, c.O.1.

⁷ As there is no mention of the date of filing the notice of intention to appear for trial in this case, I have referenced the offence date instead. This is also the case in a few other instances: see, *Omarzadah*, *Craig*, and *Delvecchio*. The time period required by courts administration to issue the notice of trial in these cases is thus actually somewhat shorter than the overall period noted, given that the defendant would have up to 15 days from the offence date to file the notice of intention to appear for trial.

⁸ Ontario Law Commission, *Modernizing the Provincial Offences Act: A New Framework and Other Reforms (Interim Report, March 2011)* (Toronto: Law Commission of Ontario, 2011), Recommendation 4.