

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

MARC E. CARUSO

P R O C E E D I N G S

BEFORE HIS HONOUR JUDGE R. E. BOGUSKY
on Thursday, 7th November, 1991,
at NEWMARKET, Ontario.

OFFENCES: Speeding

APPEARANCES:

Mr. J. Neander

Counsel for the Crown

M. K. Dolan

Counsel for the accused

THURSDAY, NOVEMBER 7, 1991

MR. DOLAN: Good morning, Your Honour

THE COURT: Good morning.

MR. DOLAN: The name is Dolan, initial
K.. I act for the defendant.

MR. NEANDER: This is an appeal where the
Crown is the applicant, Your Honour. It's an appeal on a
stay of proceedings of the Justice of Peace Bates imposed
upon a charge of speeding against the appellant on the
basis that - of the respondent on the basis of the
respondent's rights under Section 11(b) of the Charter of
Rights have been violated. The cases I have are only the
cases that His Worship referred to in his reasoning. So,
helpful to have those. I don't know if my friend has
them from the trial. But, I have made copies.

MR. DOLAN: The only two I do not have
are the A. & P. decision, and the Winstone, I believe it
was.

MR. NEANDER: I don't have those.

MR. DOLAN: Okay. I have the others, so.
Thanks.

THE COURT: I did have - I think I had
a look at this transcript. The delay was over three
months, was it?

MR. DOLAN: It was five months and 20
days.

THE COURT: Okay. And the Justice of the
Peace tossed it on that basis?

MR. DOLAN: That's correct.

THE COURT: Yes. Hear from the Crown?

MR. NEANDER: Yes, Your Honour. There is

5 a charge of speeding, of course. And it was seemingly -
well, it was explicitly important to - bearing the
Justice of the Peace reasoning of this was a proceeding
under part one of the Provincial Offences Act, rather
than part three. Part one in theory the more expeditious
manner of dealing with these offences. And also perhaps
of some importance to the respondent, although not
referred to by Mr. Bates, part one is a system wherein
the accused person doesn't have much choice certainly ..
10 with his first trial date. And it would be difficult for
the Crown to ever suggest there is a waiver of what
happens between the time the offence is laid and his
first trial date.

15 The motion was raised by Mr. Rotundo at
the outset of Mr. Caruso's trial on the 11th of
September, 1991. And it was - the motion was adjourned
for the following reasons. Namely, that Mr. Rotundo
wished to rely on two comparatively recent cases,
MacMillan and Ross of the Ontario Court of Appeal, which
had just been reported. But, in Provincial Division we
have been - we're already familiar with them, in their
unreported versions. And there was also a submission by
20 the Crown that the first date seemed to find some favour
with the Justice of the Peace, or at least; he was open
to it. Mainly, following that the Crown position put
forward by Miss Capasano there was some talk about
whether or not Mr. Caruso needed to provide statistics to
25 explain or to compare York Region Jurisdiction and it's
Provincial Offences Court to other court's. Of course,
the cases relied upon by counsel were replete with the
comparisons of statistics between Ottawa or Guelph, as
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the case was, and other jurisdictions.

Counsel relied upon Regina and Ross, as I say, and Regina and MacMillan. In Regina and MacMillan Ottawa was the jurisdiction being studied. The decision of the Court of Appeal was written by Mr. Justice Carthy. And on page 327 of that Judgment, a comparison was made between certain municipalities and Ottawa. And the court found the Winnipeg is the most appropriate comparison. And on the basis of the fact that Ottawa was not faring well compared to Winnipeg, considering all the factors in Askov the charge against Mr. MacMillan was stayed.

But, something important was found in that decision on page 329. Before, on page 328 the Crown had argued the case of Regina and Bennett, a decision of Ontario Court of Appeal a panel of Chief Justice Dubin writing one judgment and Madam Justice Arvoir writing a concurring judgment. And this admittedly was for criminal trial in Provincial Division, as of course was MacMillan. But, the Bennett case had talked about perhaps areas in the neighborhood of a year in Provincial Division. But, that each case must be decided on it's own merits and all the four factors on Askov, the length of the delay, reasons for the delay, prejudice to the accused person, and any waivers, they all have to be examined in each case anew and there shouldn't be any, as Madam Justice Arbour called them, administrative time allowance.

In distinguishing Bennett and in therefore allowing a stay of proceedings with a ten and a half month delay in MacMillan. At page 329 at paragraph (c), or marginal note (c) Mr. Justice Carthy says;

The need to compare other comparable jurisdiction is the most distinctive feature of the present case which distinguishes it from the facts in Bennett, and demonstrates compliance with the directions contained in the reasons of Madam Justice Arbour.

Further on at (e);

Unlike in Bennett in the case at bar comparisons were made to comparable jurisdictions based upon evidence that was not contested or contraverted. Admittedly...

Well, he goes on to comment on the quality of that evidence and accepted it. Ross is a case in a similar vain, arising, I believe, it was out of Guelph. In any event - you see in Ross at page 334 at paragraph (g). Bennett and MacMillan are just discussed. And it says of the trial judge in Ross;

Judge Payne in the consideration of systemic delay appears to have conducted the appropriate inquiry. He refused to hear the application until he had statistics from comparable jurisdictions. As I have stated

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he found Kingston to be
the most appropriate comparison,
and five months between arrest
and trial in the Provincial Court
to be the appropriate maximum time
interval for Wellington County.
He is certainly more familiar
with local conditions than I am.
And I can find no error in
his reasoning.

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So, with these cases before him the learned Justice of
the Peace reconsidered the matter on the 31st - on the
17th of September, and he stayed Mr. Cameron's charges
and his reasonings - his reasons include the following.
At page 7 he says at line 15 and the following;

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We are now in a position
in this jurisdiction where
the administration of the
court hold the request for trial
close to four months before
sending out a trial notice
to the defendant. In this
particular case the request for
trial by the defendant was
received by the court on
March 28th, and the trial
notice was sent back July the 18th.
A total of three months and
21 days later. Of course it was
more time and a couple of more

months to the actual trial
which was therefore approximately
five months.

5 Now, the learned justice of the peace certainly displayed
a great familiarity with the case law. All the cases
we've discussed are referred to, and indeed some other
cases are referred to. The ones that were mentioned by
10 counsel for the respondent as not having today, are
referred to. I don't take issue with what it said that
they say there. There talked about on page six and
seven. It's a decision of Your Brother Judge Hogg in a
case called Regina and Winstone, April 19th, 1990. And
although the delay in Winstone was something a great deal
15 longer than 60 to 90 days, Judge Hogg opined in the
course of his judgment that cases of such 'minor nature'
should be heard within 60 to 90 days to the date of the
offence. So, it was in a sense obiter in that case to
provide a rule of 60 to 90 days. And on page 7, another
20 decision from this very court your sister judge, Judge
Earle-Renton dealing with A. & P. as it said and in that
case she had spoken of comparable jurisdictions or other
jurisdictions, Kingston, Cornwall, Pembroke, Halton, and
Norfolk, and stated that those were able to dispose of
Provincial Offences matter in 60 to 90 days. And it
25 would seem from what Mr. Bates is saying, that Her Honour
thought that was a helpful guideline for this region.

Now, notwithstanding that Mr. Bates used
explicit in instructing himself correctly on certain
aspects of the law. For example on page 4 - or on page 6
30 at line 12, he says;

I am well aware of
of what Madam Justice Arbour
states in the Bennett
decision. I am well aware
a court should treat
each case separately when
considering the prejudice to the
defendant on such minor
matters.

He says he takes the view from the Askov decision that
criminal matter should be heard within six to eight
months after all the various cases from the court of
appeal. That bald statement in my submission is one that
is not altogether clear, especially as that dealt with
the General Division and this is dealing with Provincial
Offences Court.

But, where the Crown submits in
particular the learned justice of the peace was in error
is on page 5. Page 5, at line 10, on the following. The
Crown argument is summarized. The Crown took the
position that defence must supply the court with the
statistics and comparisons of other jurisdictions. Which
he has not done.

And the Crown - the the Court says;

I take the view without
the required statistics being
supplied. I base this decision
on the knowledge that I have
of this jurisdiction, of the
inception of the Provincial
Offences Act, April 1st, 1980.

He goes on to say;

At that time York Region
had a 150 police officers.
There was one provincial offences
court, and justice of the
peace. We are now 11 years
later. The York Regional
Police now have 800 police officers.
We still have one provincial
offences court and one justice
of the peace.

He talks at line 30 about the influx of population into
York Region in 11 years, and the growth of the police
force. And then he says;

It would only stand to
reason why we have a backlog on
a daily basis of 4,000
part one offence notice
applications for trial waiting
to be slotted in the
court in this jurisdiction.

5 He then goes on to say at page 6 that he is very well
aware what Madam Justice Arbour states in the Bennett
decision. It is there that, whether or not he is aware
that the Crown takes issue and respectfully submits that
the learned justice of the peace misapplied the Bennett
decision in well, albeit, giving lip service to it.
Because - I believe I have given Your Honour a copy of
Bennett. As I have said before, there are two decisions.
10 One of Chief Justice Dubin which is a very trenchantly
worded piece of skepticism about the whole issue of
delay. But, the one of Madam Justice Arbour seems to be
more often quoted in what she said at page 20 of her part
of the judgment. I am sure this is now reported. I am
sorry, I took the unreported decision this morning.

15 What she says on page 20 of her judgment,
it's not capable of misinterpretation in my submission.
She says;

20 In my view under the method
set out in Askov there can be
no useful comparison made
between the District Court in
Peel and the Provincial Court
in Algoma.

25 Of course, the Bennett charge came from Algoma.
She says;

Moreover, conclusions about
systemic delay and its
unreasonableness should not
rest exclusively on judicial notice.

Judges should be particularly wary of relying on nothing more than their information and perceptions as to the current state of the criminal justice system, and more significantly of the causes of this state of affairs.

And in my submission that's exactly, with respect, what Mr. Bates has done. And if we are not clear from Bennett itself, it's clear by the negative illustration of Ross and MacMillan, which ironically in my submission, are the cases the defence is relying upon. Ross and MacMillan made no doubt about it that Bennett does require statistics of that type. Unless we are to say that something a great deal less than is appropriate.

Now, examining the four factors in Askov. The length of delay here is between five and six months. The reasons for the delay it is conceded systemic. There is no waiver of time periods. Prejudice to the accused. In my submission without demeaning the irritation and depending on the charge, certainly a careless driving fatality might be a very grave matter hanging over ones head. But, without again saying of the irritation and constant chronic irritation that a charge of any kind hanging over ones head could have. In comparing the prejudice in this case to that of someone facing a criminal code offence, one must wonder whether there is very often the exquisite agony Mr. Justice Corey speaks of in the Askov case. As far as five months, is that so

5 long a delay that we need to make an inquiry into it. I would concur, and adopt, and submit to Your Honour that Her Honour Earle-Renton, Judge Hogg, and quite obviously Mr. Bates, are correct that at least as a general rule these are comparatively simple matters, and part one certainly of the Provincial Offences Act is designed to deal with these speedily, especially as it's designed to deal with as many outside of coming to court is as possible.

10 But, as far as comparisons with other jurisdictions. Even if Mr. Bates was correct. If Justice of the Peace Bates was correct, and I don't particularly take issue with what he says about the history of provincial offences in this region. That doesn't show that it compared with other regions that five months is an unreasonable amount of time or such an excessive amount of time that much of an inquiry ought to made in it.

15 The only place we have any evidence of what is done in comparable jurisdictions is not evidence in Mr. Caruso's trial, it is what Judge Earle-Renton adopted in the A. & P. case. But, even there we are certainly on the reasonings adopted from it from Mr. Bates we are unable to say whether we can say those are comparable jurisdictions. It's not enough to say that some jurisdiction is faster than York Region.

20 What has to be done, as we see in MacMillan and Ross is to give evidence of comparable jurisdictions.

25 But, Mr. Caruso's trial indeed at his appeal, because section 119 of the Provincial Offences

Act which governs appeals under part one, even allows for new evidence at appeal. So, even until this time unless I am wrong and there is going to be evidence adduced by Mr. Caruso to this effect, we still don't have those evidence of the comparisons. In my submission, with respect, what the learned justice of the peace did is he forgot to apply or he declined to apply a particular portion of Bennett. It may be the most eminent common sense that he having sat here for ten years can know the number of courts and the number of justice of the peace. But, what he cannot know, and cannot take judicial notice of, in my submission, or if he doesn't consider it, cannot stay the proceedings is how York Region compares to other jurisdictions. How York Region has dealt with. How efficiently, or not, it has dealt with what is undoubtedly a very great increase in population, and number of charges in this jurisdiction. And just how that compares to any other jurisdiction that's had a similar problem. We do not know that from this case. At least from what Mr. Bates says about the A. & P. case of Her Honour Judge Earle-Renton, we do not know how comparable those jurisdictions cited there are in. And without those matters, in my submission, the submission of the Crown was exactly correct at the hearing of the motion at the trial that the matter could not be stayed. Subject to any questions those are my submissions.

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MR. DOLAN: Unfortunately my friend, as well, was unable to get the two cases the A. & P. and the Winstone. I have different copies of the Ross and Macmillan decisions. I will just give them to you as well, my versions.

THE COURT: Thank you.

MR. DOLAN: Now, I think the facts are all in agreement. This is a minor charge. The length of the delay is not in question. No waiver. So, that we are dealing with the issue of whether the justice of the peace acted correctly in ruling that five and a half months, or five months and twenty days, was an excessive length of time.

Unfortunately I do not have certified copies of statistics to present to you today. What I will have to base my submissions on are the cases that have been dealt with already.

Now, the Askov case, I have copies of that. But, I believe we are all familiar with it by now.

THE COURT: Yes.

MR. DOLAN: It's basically set out the frame work with what we are trying to deal with here. And there was a criminal case, and whether it's six to eight months we are in question now.

This is a provincial offences matter. Much less serious. And I don't think there is any contention that this should be dealt with in a speedier manner. Part one offences are minor. They should be dealt with quickly and gotten over with.

The whole question of the appropriateness

of Justice of the Peace Bates comments, I believe, can be drawn from Ross as well. In my photocopies of Ross at page 587, paragraph (c). My friend began the paragraph, but I believe I will complete it. At the last sentence of the paragraph Justice - I've lost his name - I believe, Grange, states that as to Judge Payne;

He is certainly more familiar with local conditions than I am, and I can find no error in his reasoning.

Now, these matters are brought before a justice of the peace. Justice of the Peace Bates is very familiar of what is happening in this jurisdiction. He has demonstrated that with this - with his decision. Now, he has taken two decisions that we do not have before us today and indicated that in those two decisions they have found, the two justices have found, that comparatives can be drawn with the York Region area to Kingston, Cornwall, Penbrook, Halton, and Norfolk.

Now, the whole problem we are dealing with here is delay in procedure. Bringing court matters to fruition. Now, we have two decisions who have established that these areas are very similar to York Region. Now, does this require that on every subsequent case that all the statistics be brought before the justice of the peace to make the same ruling over and over again. This is the essence of what the Askov case is about, that court delay is becoming excessive. Matters must be dealt with.

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Now, as to whether Justice of the Peace Bates indicates that he is willing to rely on these decisions. To state that this should be applied here as well. The defendant has not brought statistics before you. That is acknowledged. But, these decisions are there. They have been established. He wishes to rely on them. And based on his knowledge of what the area is like, and how it has grown over the last 11 years, he believes that a charter violation has taken place.

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Now, the Crown has not provided any statistics in reply as to the bringing of cases to trial within a reasonable time. Is it on an appeal, is it incumbent on the respondent to establish that cases are being brought within a reasonable time. I believe not. Because we have cases that have stated that they have not been brought in a reasonable time, prior.

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Now, on the motion the Crown just merely made the bald statement that five to six months is not unreasonable. There was no other challenge. It was just the mere fact that Justice of the Peace Bates had to deal with, and that was - I need not - it's on page 11. Just a short one line, at line 17;

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But, any event with regards to the charge before you I respectfully submit more than five months, less than six months of delay from the filing date is not unreasonable.

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The Crown has not responded to the presumption of

unreasonable delay. I have not heard any other
submissions that would counter that. And at page 12,
when dealing with the matter of prejudice at line 9;

5 Your Worship, that there
is no prejudice in this matter.
It is a traffic expense
and I respectfully submit
that the defendant did not
lose his privileges
10 to drive as a result of
getting this ticket, nor was
subjected to any bail restrictions
as a result of getting the ticket.

15 Now, the prejudice that we are dealing with is having
these matters dealt with promptly. Not that there were
restrictions on his license. This matter must be dealt
with quickly, promptly. And based on the decisions
referred to by Mr. Bates, a comparative can be drawn on
the 60 to 90 day period should be accepted in York Region
20 as an unreasonable length of time for trial. And those
would be my submissions.

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REASONS FOR JUDGMENT

R. E. BOGUSKY, Prov.Ct.J. (Orally):

5 Yes. Well, perhaps a little history. We used to have in Ontario what was called a Summary Conviction Act. That was the legislation that dictated how traffic tickets would go and how prosecutions would flow for laws of the Province of Ontario.

10 The Summary Convictions Court was either a justice of the peace or a provincial court judge, depending upon where the man power was. It had an odd feature which went back historically into English law. It basically was, that no ones life shall be affected by a court unless there has been a full prosecution under oath.

20 So prior to, I think it was, 1980 when the provincial offences court was created and still dealing with the Summary Conviction Act, and still dealing with the concept that every case had to be heard in court.

25 We used to have the facade. We all got speeding tickets. For every one of those speeding tickets issued an officer, or whoever laid the ticket, would have to come to a court and basically would take the form of a justice of the peace sitting there, or a provincial court judge sitting there, with 50 police

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5 officers lined up and no accused and we would listen to
the evidence and at the end say; is there anyone who has
any evidence to call on behalf of the accused, and there
never was. It would come down, knock it down and say
guilty and assess the fine. It was a ludicrous
situation. In fact, I think the statistics that I read
at that time where that in order to prosecute and collect
10 a \$10.00 traffic ticket in Metro Toronto cost \$110.00,
because it involved; you've got this, you are overparked,
you get a parking ticket. Administratively you couldn't
be found guilty of that. You could only be found guilty
of that judicially. So, you had these by-law enforcement
officers lined up in an empty courtroom going through the
drill. It came out to \$100.00 to collect \$10.00.

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20 The Attorney General at that time was Roy
McMurtry. And that regime came down with the Provincial
Offence Act. Basically, what it did was it allowed a lot
of these tickets that we all get on a given day to be
resolved administratively. It put the onus on the
accused. For the most part it said this, if you get a
25 parking ticket you are entitled to ask for some trial
time. If you don't, you are going to be found guilty by
a clerk out in the court office. So, it cut down on a
lot of expenses, and it eliminated that dreadful scene of
30 officers lined up all collecting their overtime to give
evidence on a case that wasn't contested. A lot of money

was being saved.

I can still recall a very glossy little brochure that came out under the hand of the Attorney General at that time, which praised the virtues of the Provincial Offences Act. How speedy it was going to be. The one word that I was really impressed with, because it affected me personally because I was as a provincial court judge, was not going to become the appellate court for the justice of the peace. It said, and in addition to this the public can expect and will get an appeal within 7 days. Now, that is, I looked at it and I looked at my bailey wick, and I thought well where did he get that statistic. How am I, for the most part, going to accomplish that. In any event, that comment, although it's not relevant in this case, spells out what the philosophy of the provincial offences court was going to be. It was going to be speed. It replaced the Summary Conviction Act. Summary, in my mind, means quick, uncomplicated, and it now became the Provincial Offences Act.

In this particular case it is a routine traffic ticket. The ticket is laid in March. I believe the scenario would involve the following.

5 The accused got his ticket and then
actually read it, which many people don't. And he
actually did what he was supposed to do, that is to say,
send a request for a trial. And he was given a trial
date. And at that stage I think the procedure normally
is, and I do not know about this jurisdiction but I am
familiar with other jurisdictions, it would involve
10 somebody in the court office phoning the detachment that
laid the ticket, and say, and ask we are about set a trial
date, is the officer on duty that day. We don't want to
go to the expense of bringing somebody in on off duty. Is
he on duty that day. If the answer is yes, a notice goes
15 out to the accused, this is date.

Now, what happened is that this accused
received notice that he is going to go to trial, and the
trial started in September. So, it is approximately a five
20 and a half month delay.

The justice of the peace, Mr. Justice of
the Peace Bates, at the first instance took the position
five and a half months certainly is not summary and
perhaps contravenes the charter which guarantees that
25 when the government comes down on you, for what ever
reason, you are entitled to have it resolved in short
order.

I am surprised now knowing, you know, exactly what goes on in this bailey wick because I am relatively new to it. But, I am amazed at the stats. given by Her Honour Judge Earle-Renton in the A. & P. case. I hope that that is not the case, that in so far as that in 1980 when the P.O.A. court came into existence that, I believe without putting my finger on it, I will just shoot from the hip, I believe the stats. were that there were X amount of police officers and one sitting J. P. to service them. And then the number of officers increased to 800 from a hundred and something to 800.

MR. DOLAN: That's in Justice Bates decision, not in.

THE COURT: Oh, that's his. Oh, I thought he was quoting Her Honour.

MR. DOLAN:

THE COURT: No. I see. So, that seems that there wasn't any money being poured in to the system. The systemic delay concept is strictly, for the most part, a political one. Politicians get X amount of dollars, or the government of the day gets X amount of dollars to support something, whether it's a hospital, or school, court. There are certain institutions, I think, that have a very low profile as it relates to the voting

public. Not a whole lot of marks, I suspect, as a politician for spending money in the court system when you can build a highway and everybody is happy that they get to court earlier, get to work earlier. Go and spend some money by hiring another justice of the peace, not a whole lot goes on there. You can't stick your thumbs under the suspenders and say what a great job we did there. It's a sort of a hidden thing. But, it's a qualitative thing. The public isn't concerned about it until they run in to it, and then they say well what's going on here. Why does it take five and a half months to have a traffic ticket resolved. And the answer is, there is no money being spent in to the system. And it's grinding, and it's hurting.

In the Askov decision, which was a criminal prosecution, the Supreme Court of Canada said six to eight months. Mr. Justice Corey ever since he came down with that decision said that, well I said six to eight months, but I think people have misunderstood me. But, it's not clear what he actually meant. I find with amusement that it appears that His Honour Derek Hogg of our court has become the Mr. Justice Corey of the provincial court in that he does the same thing as Mr. Justice Corey when Mr. Justice Corey said it's six to

eight months, pick a figure. Everybody said, well what does he mean from six to eight. Well, pick a figure. I see Judge Hogg did the same thing. He said, well sixty to ninety days. Pick a figure.

If a criminal prosecution which affects society greatly has to be resolved within six to eight months. Surely, it's something that is administrative in nature. I mean, speeding is not found on the tablets from the mountain. It is a law that is sent to test us. It is supposed to be a regulatory thing. It is supposed to regulate speed on the highway. Some argue quite well that it is strictly a revenue thing. Surely, that type of issue should be resolved a lot faster.

I do not think that the court has to have statistics to compare this jurisdiction in the justice of the peace court with another jurisdiction. If it's true that in 1980 there were a 130 or so police officers in a certain area, and if it is true that in 1991 there are now 300 officers, doesn't it make sense that there would have been some increase to the system to compensate that. To look after that increase. Granted the P. O. A. Act eliminated a lot of court time by that explanation I gave earlier as to if you don't requisition a trial you are guilty. So, a lot of that has gone by the board. But,

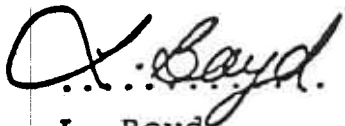
by the same token the J. P. court has been a lot - you know, there is brand new legislation in Canada. We are legislation crazy. As soon as there is an issue we petition our governments to pass new legislation. And in particular the provincial legislation. So, we have all heard of these environmental protection cases. They are big cases. And where are they. They are in the J. P. court. So, it has become a very important court, and it has to be looked after.

The bottom line is that I concur with Justice of the Peace Bates when he says five and a half months is pretty shabby, and it contravenes somebodys rights. That person is entitled to, as a tax payer, to have a better shake in a court room than waiting around for five and a half months.

So, I see nothing wrong with the logic of Mr. Justice of the Peace Bates. I dismiss the appeal. Thank you.

CERTIFICATE:

THIS IS TO CERTIFY that the foregoing is a true and accurate transcript of the record made by sound recording apparatus to the best of my skill and ability.


L. Boyd
Court Reporter