

ONTARIO COURT OF JUSTICE

THARMALINGAM JOGARAZAN

versus

HER MAJESTY THE QUEEN

Transcript of Proceedings

Before His Honour Judge B. Cavion, at the Ontario Courthouse,
60 Queen Street West, Old City Hall, TORONTO, on Thursday,
November 4th, 1999.

Appearances:

M. Booth & J. McKinnon

Agents for the Appellant

J. MacPherson

Agent for the Respondent

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His Honour's Ruling

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MS. MACPHERSON: Messrs. Booth and McKinnon are aware that this matter is being held in this courtroom.

HIS HONOUR: Thank you, Ms. MacPherson.

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The last time the matter was brought before me in 'L' Court was an appeal on a charge of Unsafe Lane Change. The real issue was a guidance or ruling on the Charter matter which was before the Court at the time; a breach of S. 11(b).

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I was given a large amount of material to read, and I have looked at it and had asked that it be adjourned until today to hear further submissions on what prejudice was caused; or are we ad idem?

MS. MACPHERSON: Yes.

HIS HONOUR: Since then, I have considered the matter at length and I am prepared to give my decision now.

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This is an appeal from a conviction for Unsafe Lane Change registered on May 11th, 1999, dating from an arrest on April 24th, 1998. This appeal raised the issue of a breach of Charter rights because of undue delay; the time elapsing between the offence and the trial being slightly less than one year.

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At trial, defence raised the issue of undue delay, and the issue was summarily rejected by the presiding justice with minimal submissions on the part of the defendant, or reasons on the part of the justice.

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The case is before me for a ruling, and both appellant and Crown respondent wish me to spell out, for the guidance of Highway Traffic Act tribunals, the legal principles that ought to be applied. In particular, both counsel would like this Court to set out a time frame between the offence and the prosecution beyond which a

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violation of a right to a trial within a reasonable time is, *prima facie*,
established and prosecution ought to be stayed.

10 In support of this submission, much was said about
the glut of prosecutions that are clogging up the system in Scarborough
causing a time frame of a year or so between the offence and trial.
Counsel tells me that there is no consistency in the decisions of the
Highway Traffic Act tribunals, and some justices of the peace summarily
accede to the requests to stay charges, and others, like in the case before
me, reject that equally as swiftly.

15 Regrettably I am going to disappoint both appellant
and respondent in this appeal. However, I have no qualms in saying that
the Charter and its provisions, including S. 11(b), apply to all
prosecutions including the Highway Traffic Act. Originally, *Askov* was
20 interpreted so as to allow the judiciary to stay prosecutions which arrive
at trial somewhat more than six to nine months from the date of the
charge being laid. As a result of these interpretations hundreds of charges
were stopped dead in their tracks. Subsequent decisions from the
appellate courts, *Regina and O'Connor* among others, refined this
25 earlier interpretation to allow the courts to consider the specifics of the
offence, the nature of the disclosure required in the offence, the extent
and nature of prejudice to the accused because of the delay, and the many
other factors that affect criminal proceedings; as well as the time frame at
issue.

30 It is not appropriate, in my opinion, to carve in
stone a time frame beyond which prosecutions under the Highway
Traffic Act, or any penal or quasi-penal statute, must be stayed.

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It is not difficult to imagine a set of circumstances involving an offence that would require many months to reach the tribunal; for instance, a Careless Driving charge may require accident reconstruction, specialists, changes in defence counsel, or the preparation of skilled diagrams and so on. If such a charge were to involve a fatality, even more experts may be required by both Crown and defence.

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For this Court to set out immutable guidelines is to return to the earlier, and since-refined, interpretations of the *Askov* decision as to S. 11(b) breaches. In my opinion, the person who raises undue delay must first satisfy the Court that a breach of S. 11(b) occurred. If that is successfully established, the Court must then weight the remedies appropriate to the circumstances. Clearly, not all successful S. 11(b) arguments result in the staying of charges. There are remedies that must be considered.

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Having said that, and at the risk of contradiction, I do not hesitate to add that a time frame of one year from the date of offence to the date of trial is a very serious cause for concern for any tribunal. At the very least, at that point, the Crown should be on notice that if the accused raises the issue of delay, and some prejudice is shown, some valid explanation acceptable to the tribunal has to be forthcoming.

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As far as the appeal at bar is concerned, the appellant simply raises the issue and relies on the fact, at page 4:

", in this courthouse alone that in excess of twelve months has been stayed. I mean, just the period."

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In my opinion this basis is really insufficient. The person who raised the issue of S. 11(b) has to present it in a more comprehensive way.

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Clearly, the tribunal could have been more polite in dealing with the matter, and properly ought not to have said,

10 "Gee, you know maybe I should take five minutes to go get a copy of the Charter so you can read it."

15 That tone is not appropriate but, having said that, the tribunal, faced with a very insubstantial basis for the motion, really had no choice except to dismiss. As as result, this appeal must be dismissed.

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30 Certified Correct



T. Wilson, Court Reporter

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