

S.C.C. No.

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

JAMES SAPARA

Applicant
(Applicant)

-and-

HER MAJESTY THE QUEEN

Respondent
(Respondent)

APPLICATION FOR LEAVE TO APPEAL

Pursuant to Section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as amended

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control over the process and fulfill it's constitutional duty to protect Mr. Sapara's individual rights and to ensure his trial takes place within a reasonable time.

• **Brief Procedural Chronology**

14. The following is a brief chronology of the delays in the proceedings:

- **Day 1** – Mr. Sapara charged December 17, 1997.
- **Day 5** — Counsel for Mr. Sapara requests disclosure on December 22, 1997.
- **Month 1** — First appearance on January 7, 1998. Mr. Sapara enters election and plea without the benefit of disclosure. Counsel for Mr. Sapara again requests disclosure on January 19, 1998. The availability of the other co-accused's counsel causes delay in scheduling the Preliminary Inquiry.
- **Month 1** — January 15, 1998 — Preliminary disclosure sent to defence counsel.
- A series of delays due to the co-accused requesting later court dates.
- **Month 3** — March 5, 13, and 18, 1998, counsel for Mr. Sapara requests disclosure again.
- **Month 3** - March 30, 1998 – The other co-accused's counsel withdraws.
- Counsel for Mr. Sapara continues to express concern over delays and requests advice and direction from the Court.
- **Month 4** — The other co-accused finally retains counsel sometime in April 1998.
- **Month 4** — The other co-accused and Crown discuss adjourning the Preliminary Inquiry on or around April 25, 1998. Mr. Sapara and his counsel, were neither consulted, nor participated in these discussions.
- **Month 4** — April 29, 1998, Counsel for the other co-accused seeks an adjournment, and fixing of a new date adjourned to May 13, 1998.
- **Month 5** — May 13, 1998 – The Preliminary Inquiry finally rescheduled for November 2, 1998 for three days, and the pre-preliminary conference is set for September 11, 1998.
- **Month 10** — October 23, 1998 — Counsel for Mr. Sapara requests further disclosure.
- **Month 11** — November 2, 1998 — The Preliminary Inquiry begins. However, it takes longer than three days because of the complainant's behaviour on the witness stand and because the Crown decides to call more witnesses.
- **Month 12** — Preliminary inquiry continues.

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- **Month 13** — The Preliminary Inquiry finally concludes January 20, 1999, more than 13 months after Mr. Sapara was charged.
- **Month 13** — The other co-accused's counsel withdraws.
- **Month 14** — February 10, 1999 — First arraignment delayed by a month.
- **Month 15** — March 10, 1999 — Second Arraignment — The other co-accused is still unrepresented and the matter is adjourned again.
- **Month 16** — April 14, 1999 — Third Arraignment — The other co-accused is still unrepresented and the trial is scheduled for September 27, 1999 and the co-accused is cautioned by the Court to get a lawyer quickly so the lawyer can prepared for trial.
- 10 • **Month 19** — July 19, 1999 — Pre-Trial Conference — The other co-accused is still unrepresented despite numerous warnings from the Court.
- **Month 19** — Counsel is finally appointed for the other co-accused after efforts from Mr. Sapara's counsel and the Crown. The trial is adjourned and August 11, 1999, was set to fix a new trial date.
- **Month 20** — More delays — On August 11, 1999, fourth arraignment. Counsel for the other co-accused requests a new trial date. Trial is rescheduled to April 3, 2000, more than 28 months after Mr. Sapara was charged.
- **Month 27** — Pre-trial conference on March 10, 2000.
- **Month 28** — Trial on April 3, 2000. A judicial stay is granted to Mr. Sapara after he
20 brings a *Charter* motion pursuant to s.11(b) of the *Charter* before the Learned Trial Judge who enters a judicial stay of proceedings. The trial judge concludes that the delays were unreasonable which constituted an unjustified violation of Mr. Sapara's constitutional right to a trial within a reasonable time.
- The Crown appeals the stay.
- At the same April 3, 2000 trial, the other co-accused successfully argues section 8 violation of the *Charter* based on the fact the Authorization for interception of private communications was not lawfully obtained as the RCMP had omitted key facts from the affidavit which were never presented to the judge who granted the Authorization. The Trial judge concludes that the Authorization was invalid and all the evidence obtained
30 through it excluded. The Crown calls no further evidence, advising the Court that there

was no reasonable likelihood of conviction without the excluded evidence. And then the Crown appeals this too.

Ref. Judicial Reasons at par. 4 [Tab 3A]

Reasons of Court of Appeal at par. 4 [Tab 3C]

Pull-out Delay Diagram [Tab 2]

15. There was a period of approximately 34 months from the time of the arrest and the time the trial would likely conclude.

Ref. Judicial Reasons at par. 35 [Tab 3A]

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16. So in other words, through all of 1998, all of 1999, all of 2000, and half of 2001, and the Crown can still not give the applicant a trial. To date, a total of 41 months.

PART II – POINTS IN ISSUE

a) Are serious Delays Caused by a Co-Accused “Neutral” Delays

- 20 17. Whether or not delays resulting in denial of an accused person’s right to trial within a reasonable time caused by a co-accused’s failure to properly instruct and retain counsel, are “neutral delays”.

b) What is the Extent of the Crown’s Obligation to Bring an Accused Person to Trial Within a Reasonable Time when a Co-Accused Causes Serious Delays in the Proceedings

- 30 18. Where multiple accused persons are jointly charged and where one co-accused steadfastly asks the Crown to be tried in a speedy fashion, and another co-accused consistently fails to return and instruct counsel thereby occasioning delays, and the other co-accused consistently fails to retain and instruct counsel, what duty is there on the Crown to protect the 11(b) rights of the co-accused to a trial within a reasonable within time?