

Ontario Superior Court of Justice

W.B. Trafford J.

October 28, 2015.

[2015] O.J. No. 5591 | 2015 ONSC 6523

Between Her Majesty the Queen, and Mark Pusey

(45 paras.)

## Case Summary

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**Criminal law — Constitutional issues — Canadian Charter of Rights and Freedoms — Legal rights — Procedural rights — Delay — Trial within a reasonable time — Remedies for denial of rights — Specific remedies — Stay of proceedings — Application by accused for stay of proceedings for delay dismissed — In April 2011, accused was arrested for fraud over \$5,000 for misappropriations from charitable organization he was employed by — Total delay of 55 months was sufficient to warrant judicial scrutiny — Accused waived 420 days of delay, 495 days was inherent delay, 289 days was caused by actions of accused — 456 days was institutional delay, which was not unreasonable — There was significant prejudice to accused's liberty and security interests caused by delay, but delay caused to some extent by accused and his fair trial interests were intact.**

Application by the accused for a stay of proceedings on the basis of unreasonable delay. In April 2011, the accused was arrested and charged with fraud over \$5,000 for misappropriations from the charitable organization he was employed by. He was released on bail on conditions which disrupted his employment. His first trial date in May 2014 was waived because his counsel of choice was appointed to the court. The second trial date in March 2015 was set on a with or without counsel basis by counsel who was expected to be retained. The accused expressly waived his rights under s. 11(b). The trial was not reached in March 2015 because no court was available. A third trial date in November 2015 was set. The accused alleged prejudice as his family income had been drastically reduced, which affected his ability to provide for his special needs child. He also alleged that his health had suffered. A material witness had left the country and it was not known when she would return.

HELD: Application dismissed.

The total delay of 55 months was sufficient to warrant judicial scrutiny. The accused expressly waived 420 days of the delay. The inherent delay was 495 days. 289 days of delay was caused by the actions of the accused for preparation of the defence and his late decisions to proceed with the preliminary hearing without counsel then waive it and failing to file materials. Aside from the institutional delay, there was no delay attributable to the Crown. The remaining delay of 456 days was institutional delay and was not unreasonable. There was significant prejudice to the

accused's liberty and security interests caused by the delay, but the delay in bringing the matter to trial was caused to some extent by the accused. Furthermore, the accused's fair trial interests were intact.

## **Statutes, Regulations and Rules Cited:**

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Canadian Charter of Rights and Freedoms, 1982, s. 7, s. 11(b)

## **Counsel**

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*Michael Coristine*, for the Crown.

*Paula Seymour*, for the Defendant.

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### The Ruling under s. 11(b) of the *Charter*

## W.B. TRAFFORD J.

### A. Introduction

1 On April 28, 2011 Mark Pusey was arrested by the TPS and charged with fraud over \$5,000 in connection with a series of allegedly dishonest misappropriations totalling about \$115,000 from the Fred Victor Centre ("Centre"), between September 2008 and July 2010. The Centre is a charitable organization. The defendant was the Centre's Director of Development and Communications. He was released on a recognizance with terms and conditions that prohibited him from having any financial dealings with any charitable or nonprofit organization and, further, from possessing any negotiable financial instruments or identification not in his name or his son's name. Those conditions disrupted his employment. His son is a child with special needs who was about 4 years old then. The preliminary hearing was waived by the defendant on December 12, 2012, as a self-represented litigant. His first trial date, May 12, 2014, was vacated because his counsel of choice, Donald McLeod, was appointed to the Court. The second trial date, March 23, 2015, was set on a with or without counsel basis by Paula Seymour who was not yet, but expected to be, retained. The defendant expressly waived his rights under s. 11(b) as it applied to that interval to the second trial date. Ms. Seymour confirmed that she was counsel of record on the trial readiness date of January 15, 2015. The trial was not reached on March 23, 2015 because no court was available. The third trial date of November 9, 2015 was agreed upon by counsel. Approximately 55 months will have passed from the defendant's arrest in April 2011 to the end of the scheduled trial November 2015.

2 This is an application by the defendant under s. 11(b) of the *Charter* for an order staying the prosecution on the basis of an unreasonable delay in bringing this matter to trial. Reference was made to *R. v. Askov*, [\[1990\] 2 S.C.R. 1199](#), *R. v. Morin*, [\[1992\] 1 S.C.R. 771](#), *Mills v. R.* [\[1986\] 1 S.C.R. 863](#), *R. v. Satkunanathan* [\(2001\), 152 C.C.C. \(3d\) 321](#) (Ont. C.A.), *R. v. Tran*, [2012 ONCA 18](#) and many other cases. Counsel do not disagree on the legal principles governing the determination of this application. They do, however, disagree on the application of those principles to the circumstances of the case.

3 The application is dismissed.

## B. The Circumstances of the Case

### B.1 Introduction

4 Let me begin with a summary of the circumstances of the case. This will include a summary of the alleged fraud, a brief reference to the charts of those circumstances prepared by counsel for the hearing of the application, and the *viva voce* and other evidence tendered during the hearing of the application.

## **B.2 The Summary of the Alleged Fraud**

5 The defendant was employed by the Centre as the Director of Development and Communications. It is a non-profit organization for homeless and low income people in Toronto. He had authority to submit requisitions for cheques to pay the Centre's expenses and to sign its cheques. He created two companies, with himself as the sole owner, which were registered with the Centre as fundraising service companies. An internal audit in February 2011 revealed that 20 invoices were submitted to the Centre by one of his companies and 25 invoices were submitted by his other company, for services that allegedly were not provided at all or were provided by someone else. All of the invoices were marked to his attention as the Director. All of them were paid by cheques drawn on the Centre's account after they were requisitioned and signed by the defendant. All of the cheques were deposited into his companies' bank accounts, about \$50,400 for one company and about \$65,700 for the other company.

6 The case for the Crown consists of the documents relating to these transactions and the related testimony of some employees of, or volunteers for, the Centre tendered to prove the falsehood of the invoices and the related allegedly dishonest conduct of the defendant. The defence is that all of the payments to the defendant's companies were authorized by the policies, practices and procedures of the Centre, as the defendant believed them to be at the material times. Although there is a degree of complexity to the case, its essential framework is rather simple. The assessment of the credibility of the witnesses, including the defendant if he testifies, and the reliability of their testimony, in the context of any confirmatory evidence at trial, may be complex. The degree of that complexity cannot be precisely determined on this application because the preliminary hearing was waived and none of the witness' signed statements or the related documents were tendered on the application.

## **B.3 The Charts of the Circumstances**

7 Both counsel submitted charts of the circumstances of the case in chronological order. Of necessity, they are not absolutely correct because of their brevity. The transcripts of the appearances in the OCJ and SCJ complement the charts. The charts and the transcripts, considered together, reliably prove the circumstances for the purposes of this application. The chart of the Crown is appended to these reasons because it is more detailed.

## **B.4 The Additional Circumstances of the Case**

8 The defendant testified on the application. Both counsel amplified the circumstances through submissions to the court.

9 The defendant described the adverse effect on him of the charge and the delay in bringing it to trial. His salary at the Centre, about \$92,000 per year, has been replaced by one of about \$15,000. Together with his spouse, who is a Professor at the University of Western Ontario, the family income is about \$100,000 per year. The reduction in income has caused significant hardship, particularly in connection with the care of his son. He is a child with special needs. The cost of tending to those needs is about \$600 per month. OHIP does not pay these costs. The

defendant cannot afford to pay for special care with the frequency that is in the child's best interests. The reduction in such care has adversely affected the child's development and quality of life. This has been emotionally devastating for the defendant. His own health has suffered. Efforts to obtain more remunerative employment have not succeeded, because of the charge and the conditions in the recognizance prohibiting employment at any non-profit organization or otherwise involving the handling of financial instruments of other people. No application to vary the bail was made by or on behalf of the defendant. His lawyers led him to believe that such an application would be dismissed. No comments about the adverse effect of the charge and the delay on the defendant were made to any court by any counsel at any time in the history of this matter, or by the defendant himself. He trusted his lawyers to act in his best interests.

**10** Recently, a material witness for the Crown and the defence left Canada. On September 13, 2015, Leah Cayayab, the defendant's assistant at the Centre, went to the Philippines. She is a divorced woman who has three mature children in Toronto. Her return date is not presently known by counsel. It is anticipated that she will not be in Toronto for a trial in November 2015. She gave a signed statement to the TPS in April 2011, but did not testify at the preliminary hearing because the defendant waived it, as a self-represented litigant. To preserve her evidence, Detective Constable Chevalier, the officer-in-charge of the case, decided to conduct a videorecorded interview of Ms. Cayayab in compliance with *R. v. B.(K.G.)*, [\[1993\] 1 S.C.R. 740](#) and advised the Crown Attorney assigned to the case of that intention. John Scutt, the Deputy Crown Attorney in Toronto, is that person. He decided to contact Ms. Seymour to advise her of this development and to provide her with an opportunity to be present during the videorecorded interview and to cross-examine Ms. Cayayab within the normal rules of evidence. A letter to that effect dated September 3, 2015 was faxed to her. He emailed her to the same effect on September 4, 2015, and requested a response as soon as possible. No response was forthcoming. On September 10, 2015, around 9 am, he sent another email advising her the interview would be conducted that afternoon and asking her to contact him or Detective Constable Chevalier if she wanted to participate. There was another similar email around 9:20 am. No response was received by the Crown Attorney or the officer-in-charge. The videorecorded interview was conducted in the absence of Ms. Seymour. On September 24, 2015 Mr. Scutt emailed her that the DVD of the interview could be picked up at the Crown Attorney's Office. She picked it up on October 16, 2015. She did not receive any of the emails. She would have attended for the interview and cross-examined Ms. Cayayab had she received a timely notice of the opportunity. Ms. Seymour viewed the DVD during a recess of the application. The recorded interview of September 2015 is more or less the same as the signed statement of April 2011. The statement, she believes, is *KGB* compliant. Ms. Cayayab was not asked during either interview about the policies, practices and procedures at the Centre that are relied upon by the defence as evidence in support of his good faith at the time of the alleged misappropriations. What her evidence on those points would be is not known at this time, and has not been proven on this application. It may or may not confirm any such testimony by the defendant or other witness from the Centre.

## **B.5 Conclusion**

**11** That completes my summary of the circumstances of the case.

## C. The Legal Analysis of the Case

### C.1 Introduction

**12** The evidentiary and persuasive burdens are on the defendant in an application under s. 11(b) of the *Charter*. Such applications are not decided by a mathematical or administrative formula. A judicial determination must be made having regard for the purpose of the constitutionalized recognition of the right to a timely trial. It protects the defendant's rights under s. 7 of the Charter to security of the person, liberty and a fair trial, as well as the public interest in a timely determination of the merits of the case on the basis of reliable evidence. The factors to be considered are:

- \* the length of the delay;
- \* the waiver of time periods;
- \* the reasons for the delay including:
  - \* the inherent time requirements of the case;
  - \* the actions of the defendant;
  - \* the actions of the Crown;
  - \* the limits on institutional resources; and
  - \* any other reasons for the delay; and
- \* the prejudice to the defendant.

Courts are required to determine the causes of the delay, and to give them weight in light of the purposes of s. 11(b). As the seriousness of an offence increases, the societal interest in a trial on the merits increases. Only unjustifiable periods of time carry much weight in applications like this one. The mere existence of a long delay to trial does not invariably lead to the conclusion the delay was unreasonable. Many courts have stated that the stay of proceedings under s. 11(b) should be granted conservatively, after considering the circumstances of the case and the values lying at the foundation of the section. The minimum remedy is a stay of proceedings. The court has no jurisdiction to try a defendant when there has been an unreasonable delay in bringing it to trial. In assessing the reasonableness of a delay, the court must consider the total delay and not subject each aspect of the delay to an isolated analysis. For an elaboration of these principles, see *Morin, Tran, Satkunanathan, R. v. Bennett* (1991), 64 C.C.C. (3d) 449 (Ont. C.A.) and *R. v. Lahiry*, [2011] O.J. No. 5071 (S.C.J.).

**13** Let me now deal with each of the factors to be considered. In these reasons, I will analyze each of them and then deduct the intervals referable to them to demonstrate my consideration of the total delay in this case.

### C.2 The Length of the Delay

**14** The total delay in this case from the defendant's arrest in April 2011 to the end of the

scheduled trial in November 2015 is about 55 months. This period is sufficient to warrant judicial scrutiny. It is approximately 1660 days.

### **C.3 The Waiver of Time Periods**

**15** The defendant expressly waived his rights under s. 11(b) that were implicated by three intervals:

- \* from November 28, 2011 to January 9, 2012, a period of 40 days, to permit resolution discussions with the Crown Attorney in the OCJ;
- \* from January 26, 2012 to February 13, 2012, a period of 18 days, because the defence was not ready to set a date for the preliminary hearing in the OCJ; and
- \* from March 26, 2014 to March 23, 2015, a period of 362 days, because the new counsel of record for trial in the SCJ, Paula Seymour, was not available for the first trial date of May 12, 2014.

The total period waived was 420 days. When deducted from the overall delay of 1660 days, the remaining delay is 1240 days.

### **C.4 The Reasons for the Delay**

#### **C.4.1 Introduction**

**16** Let me now move to a consideration of the reasons for the delay, including the inherent time of the case, the actions of the defence, the actions of the Crown and the limits on institutional resources.

#### **C.4.2 The Inherent Time of the Case**

**17** The inherent time for the case focuses upon the complexity of the case and all of the procedures that are a part of the normal, reasonable intake functions of the Court. They include the conduct of bail hearings, the retaining of counsel, the providing of disclosure to the defence, the dialogue between counsel aimed at resolving or simplifying the case and the conduct of a judicial conference before a preliminary hearing or trial. Such time periods are neutral. They are not attributed to the Crown or the defence. They are calculated having regard for all of the pertinent circumstances, including the resources of the affected courts and the local legal culture.

**18** The total delay in the OCJ attributed to its intake function is 214 days. Substantial disclosure was provided to the defence on June 28, 2011, about two months after the information was sworn. The case is not very complex but does require careful consideration by counsel of its live issues, factual and legal. There was some delay in scheduling the dialogue between counsel, initially and by way of continuation. There was some further delay in scheduling a judicial conference in October 2011. The delay is open to some criticism but, in any event, it is properly treated as neutral time in this application in my view.

**19** Similarly, the intake procedures at the SCJ from the initial appearance to the first scheduled judicial pretrial conference on March 14, 2013 were normal and reasonable. The defendant required some time to retain trial counsel. His choice was Donald McLeod. It was a period of 92 days. That interval is properly treated as neutral time.

**20** Thus, the inherent time of the case is 214 days in the OCJ and 92 days in the SCJ, a total of 306 days. That is neutral time that is to be deducted from the delay of 1240 days, leaving the delay remaining to be considered as 934 days. When complemented by the neutral time estimated for the trial, 9 days, that remaining period is 925 days.

**21** There is one further component of the inherent time of the case. It is the time allotted for the preparation of the case by the defence, whether it be by defence counsel or the defendant as a self-represented litigant. The remarks by counsel to both the OCJ, in the scheduling of the preliminary hearing, and the SCJ, in the scheduling of the trial, do not permit an exact calculation. Rather, in this case, having regard for the complexity of the case and the nature of the defence, I have determined that periods of 90 days should be allocated in this spirit. This appears to be compatible with existing jurisprudence, such as *Lahiry* and *Tran*. It is important to the calculation of institutional delay, which is the responsibility of the Crown. Thus, the neutral time for the purposes of preparation in the OCJ and the SCJ is 90 days each, a total period of 180 days. When deducted from the delay of 925 days, the remaining delay is 745 days.

#### **C.4.3 The Actions of the Defence**

**22** Let me now deal with the actions of the defence in this case.

**23** On November 28, 2011, the defence requested an adjournment in the OCJ to permit further resolution discussion with the Crown Attorney. It was granted, to January 26, 2012, a period of 17 days.

**24** On February 13, 2012, the scheduling of the preliminary hearing was completed. It was complicated by the fact that the defendant had not yet completed the retainer of counsel. Counsel who expected to be retained addressed the court. His schedule was accommodated, although the extent of such accommodation is not clear on the record. The preliminary hearing was set for December 12, 2012, on a with or without counsel basis. The retainer never was completed. In October 2012, the defendant advised the court he would be self-represented at the preliminary hearing. Under *Tran*, I have allocated 90 days for defence preparation, by counsel or the defendant, and held the defence responsible for 90 further days of delay, because of the late decision to proceed to the preliminary hearing without counsel, leaving an institutional delay to the preliminary hearing of 121 days. The defendant waived the preliminary hearing on December 12, 2012 as a self-represented litigant who, apparently, was advised by some counsel at some time that such a waiver would not likely undermine the defence at trial.

**25** Similarly, the defence caused some delay in the SCJ. It failed to file materials for the JPT on March 14, 2013. No one appeared for the defence in connection with the JPT scheduled for April 26, 2013. A scheduling problem of defence counsel prevented a scheduled JPT on July 9,



2013. Ultimately, the JPT was held on September 12, 2013. The total delay by reason of these circumstances was 182 days.

**26** Thus, the total delay attributed to the defence in the OCJ and the SCJ is 289 days. Deducting that from the delay of 745 days leaves a remaining delay of 456 days.

#### **C.4.4 The Actions of the Crown**

**27** Let me now deal with the actions of the Crown in this case.

**28** Aside from the institutional delay which must be attributed to the Crown, I do not attribute any delay to the Crown in the OCJ and the SCJ.

**29** Substantial disclosure was provided to the defence in the OCJ on June 28, 2012. Any problems with disclosure that could be attributed to the Crown rather than be treated as neutral time have not been proven on this application.

**30** The non-availability of the schedule of the Crown Attorney assigned to the case delayed dialogue with the defence in the OCJ in the summer of 2012 to some extent, with some consequential delay in the scheduling of the judicial conference before the preliminary hearing. The evidence does not give a precise insight into those scheduling problems. I am satisfied that such problems are, to some extent, the reality of the normal intake of any case into the OCJ and the SCJ. For that reason I assign no responsibility to the Crown for any such delay. It would be a short period in any event, one that would not affect the overall result of the application.

**31** Otherwise, on the evidence before me, the Crown has proceeded with reasonable dispatch in the conduct of the case, having regard for its complexity, as previously described, and all of the other pertinent circumstances.

**32** Thus, the delay remaining to be assessed by the court is still 456 days.

#### **C.4.5 The Limits on Institutional Resources**

**33** Let me now deal with the delay caused by the limits on institutional resources. It is the delay from the point in time when counsel are ready to proceed but the court is unable to accommodate the case. This delay is attributed to the Crown.

**34** As I mentioned earlier, I have attributed 121 days to the institutional delay in bringing the matter to the preliminary hearing. The reasons for doing so will not be repeated now. It is compatible with guidelines for institutional delay provided for the OCJ by *Morin*, 8 to 10 months.

**35** There are two intervals of institutional delay in the SCJ. One such interval is the 104 days from December 13, 2013 to March 26, 2014, the first trial date. The other relates to the delay to the third trial date, from March 23, 2015 when the court could not hear the matter on its second trial date to November 9, 2015. The total institutional delay in the SCJ was 335 days. That total is compatible with the guidelines for the SCJ grounded by *Morin*, 6 to 8 months.

**36** Thus, the total institutional delay in the OCJ, 121 days, and the SCJ, 335 days, is 456 days. That accounts for the remaining delay.

#### **C.4.6 Conclusion**

**37** That completes my analysis of the reasons for the delay in this case.

#### **C.5 The Prejudice to the Defendant**

**38** Let me now deal with the prejudice the delay has caused the defendant. This factor requires the Court to consider the effect of the delay on the defendant's right to the security of the person, the right to liberty and the right to make full answer and defence. It is an important factor. Under *Bennett*, a defendant who is prejudiced is responsible for taking the initiative to alleviate any prejudice that may be apparent only to him. It is to be emphasized that such prejudice is to be distinguished from the prejudice caused by the laying of the charge and what reasonably goes with it.

**39** The defendant's affidavit and *viva voce* testimony described the adverse effects of the charge and the delay in bringing it to trial. The conditions to the bail prevented employment in his field. No application to vary them was made at any time, apparently because his lawyers did not believe any such application was likely to succeed. He has been unable to provide financial support for his family to the usual extent. This has been particularly stressful for him because of the special needs of his son and the adverse effect the reduction in his care has had on his development as a child. His savings have been spent, on lawyers' fees and other necessities of life. His relationship with his spouse and other relatives has been strained. He was arrested 5 times in connection with alleged failures to appear in court on this matter. For two of them, warrants for his arrest did not exist, apparently due to administrative error in failing to issue them. Two of the others led to acquittals. The third one was withdrawn by the Crown. All of this impacted adversely on his own health, physical and emotional. No doubt it undermined his sense of self-worth. People now perceive him differently than they did before the charge and the publicity that went with his arrest. Life has been very difficult. I accept his description of the adverse effect of the delay in bringing the case to trial.

**40** What weight should be given to this factor in the determination of this application? As to the defendant's right to security of the person, some of the adversity is attributable to the charge itself. No lawyer advised the OCJ or the SCJ of prejudice caused by delay. No application for a variation of bail was made. No designation was filed to alleviate the problems associated with travelling from London to Toronto for court. The adverse effect was caused, in part, by the defendant's delay in retaining counsel in the OCJ. To some extent, the defendant has contributed to his own adversity, by for example, failing to appear in court. The arrest of the defendant on warrants believed to exist but in fact non-existent is a systemic disgrace. I am not able to be more precise in my analysis of this aspect of the case. Nevertheless, the prejudicial effect of the delay on the defendant's liberty and security interests, proven and inferred, is significant in this case.

**41** However, the effect of the delay on the right to security of the person is not augmented by prejudice to the conduct of the defence that was caused by the delay. The fair trial interests of the defendant are intact. The evidence on the application does not prove any such prejudice. Ms. Cayayab may or may not have evidence that helps the defence. She may be available at trial, through some form of videoconferencing or actual attendance as a witness at the expense of the Crown. An agreed statement of fact may be feasible in such circumstances. Other witnesses may have evidence similar to what the defence hopes to elicit from her. Another adjournment at the request of the defence may be in the interests of justice. The passing of time may weaken the Crown's case insofar as it relates to the alleged dishonesty of the defendant. For these reasons, I decline to conclude that the departure of Ms. Cayayab to the Philippines in September 2015, in the context of the rest of the delay, has significantly interfered with the right to make full answer and defence, given that she was available for an earlier trial.

### **C.6 The Balancing of the Factors**

**42** What is the result of balancing the factors to be considered under Morin?

**43** Looking at the circumstances of the case as described in these reasons, it is my view that the application should be dismissed. The defendant has experienced a significant amount of stress because of the delay in bringing the case to trial. However, the delay was caused to some extent by the defendant. Other steps could have been taken to reduce the delay and to expedite the trial, such as an earlier decision to represent himself at the preliminary hearing, an earlier waiver of the preliminary hearing or agreeing at trial on the transactions and limiting the trial to the *mens rea* issues. A shorter trial can be scheduled earlier, by the court and counsel. His failures to attend court, due to difficulties travelling from London or otherwise, could have been avoided through a designation filed with the court. If he wanted to attend court, as was his right, the designation would have covered any failure to appear due to unforeseen problems. The public has a legitimate interest in a trial of the merits of the case, especially insofar as it involves an alleged breach of trust by the defendant in connection with his employment by a firm that, in essence, exists to help homeless and otherwise disadvantaged people. The defendant's conduct may or may not have been in compliance with the Centre's policies, practices and procedures relating to such payments, or believed to have been in such compliance by him. That will be determined by the jury at trial, having regard for the evidence at trial, including any testimony by the defendant, the presumption of innocence and the burden on the Crown to prove its case beyond a reasonable doubt.

### **C.7 Conclusion**

**44** That completes my legal analysis of the application, and my reasons for dismissing the application.

### **D. Conclusion**

**45** The application is dismissed.

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W.B. TRAFFORD J.

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**Schedule "A"**

R. v. Pusey

DATE	PURPOSE
APRIL 28, 2011	<b>ARREST + INFORMATION SWORN + SHOW CAUSE APPEARANCE (FRAUD OVER \$5K)</b> NO TRANSCRIPT PROVIDED; the respondent accepts the facts as outlined in the applicant's summary
JUNE 14, 2011	<b>SET DATE</b> NO TRANSCRIPT PROVIDED; the respondent accepts the facts as outlined in the applicant's summary
JUNE 21, 2011	<b>SET DATE</b> NO TRANSCRIPT PROVIDED; the respondent accepts the facts as outlined in the applicant's summary
JUNE 28, 2011	<b>SET DATE (FRAUD OVER \$5K) + SHOW CAUSE (FTC RECOGNIZANCE)</b> Agent for counsel Jeff Hershberg appears for the accused. "Substantial" disclosure provided on the fraud charge. Disclosure not yet available on the new fail to comply charge. Adjourned to July 26, 2011 to conduct a CPT on the fraud charge and prepare disclosure on the fail to comply charge.
JULY 26, 2011	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for accused. Despite efforts by both sides, Crown and defence were unable to connect for a CPT. Disclosure not yet available on the FTC charge. Adjourned to August 16, 2011.
AUGUST 16, 2011	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for the accused. Defence was prepared to set a JPT on the fraud charge, however dates for the assigned Crown, John Scutt were not known. Disclosure not yet available on the FTC charge. Adjourned to September 13, 2011.
SEPTEMBER 13, 2011	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for the accused. John Scutt appears for the Crown. A CPT was held and a JPT is set for October 3, 2011. Disclosure not available on the FTC charge. Adjourned to October 12, 2011.
OCTOBER 12, 2011	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for the accused. Accused also appears. JPT now scheduled for October 17, 2011. Disclosure not available on the FTC charge. Adjourned to October 24, 2011 at the defence's request.
OCTOBER 24, 2011	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for the accused. Crown and defence both request adjournment to November 15, 2011.
NOVEMBER 15, 2011	<b>SET DATE (BOTH CHARGES)</b> Counsel Jeff Hershberg appears for the accused. John Scutt appears for the Crown. Both parties need more time to continue ongoing discussions and request an adjournment to November 28, 2011.
NOVEMBER 28, 2011	<b>SET DATE (BOTH CHARGES)</b> Counsel Jeff Hershberg appears for the accused. Defence expressly waives 11(b) in order to continue discussions with the accused and the Crown. Adjourned to January 9, 2012 at the request of the defence.

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<b>JANUARY 9, 2012</b>	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for the accused. John Scutt appears for the Crown. Defence asks for further time to continue resolution discussions with the Crown. Mr. Scutt expresses concern about the pace. Adjourned to January 26, 2012 at the request of the defence.
<b>JANUARY 26, 2012</b>	<b>SET DATE (BOTH CHARGES)</b> Agent for counsel appears for the accused. Defence requests that the matter go over before setting a date for a preliminary hearing. Defence expressly waives 11(b). Adjourned to February 13, 2012.
<b>FEBRUARY 13, 2012</b>	<b>SET DATE (BOTH CHARGES) – PRELIMINARY HEARING SET (FRAUD OVER \$5K)</b> Agent for counsel appears for the accused. Accused also appears. Crown elects to proceed by indictment on the fraud over \$5K charge. Accused elects to be tried by judge and jury, and to have a preliminary inquiry. The preliminary hearing is set for December 12-14, 2012 and marked “with or without counsel”.
<b>MAY 17, 2012</b>	<b>SET DATE (FTC RECOGNIZANCE) – TRIAL DATE SET FOR FTC CHARGE</b> Agent for counsel appears for the accused. Mr. Scutt appears for the Crown. Accused also appears. The Crown brought forward the information to set a trial date for the FTC charge, as it was mistakenly not done on the previous occasion. Trial date set for March 7, 2013 at the Ontario Court of Justice.
<b>OCTOBER 2, 2012</b>	<b>TO BE SPOKEN TO (FRAUD OVER \$5K)</b> Agent for counsel appears for the accused. Counsel is not retained and not willing to go on record for the preliminary hearing. Defence requests to come back on October 10, 2012 to confirm retainer.
<b>OCTOBER 10, 2012</b>	<b>TO BE SPOKEN TO (FRAUD OVER \$5K)</b> The accused appears self-represented. Accused says he wants to retain counsel for the preliminary hearing, but confirms that he will proceed without counsel at the preliminary hearing if necessary.
<b>DECEMBER 12, 2012</b>	<b>PRELIMINARY INQUIRY</b> The accused appears self-represented. John Scutt appears for the Crown. Mr. Scutt states that the accused decided to waive the preliminary hearing “yesterday”. The accused tells the court that he received legal advice with respect to waiving the preliminary hearing, and that he would “prefer to go to trial”. The Crown was ready to proceed. Accused is therefore ordered to stand trial on one count of fraud over \$5,000. Matter is remanded to Superior Court for January 30, 2013.
<b>JANUARY 30, 2013</b>	<b>SET DATE – SUPERIOR COURT OF JUSTICE</b> Counsel Donald McLeod (as he then was) appears on behalf of the accused. The accused also appears. Counsel requests that the matter go over to February 20, 2013 to discuss retainer. Jill Witkin for the Crown states that the Crown would have been ready to schedule a JPT, but for the adjournment request.
<b>FEBRUARY 20, 2013</b>	<b>SET DATE</b> Paula Seymour appears as agent for counsel. John Scutt appears for the Crown. A judicial pre-trial is set for March 14, 2013.

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<b>MARCH 14, 2013</b>	<p><b>JUDICIAL PRE-TRIAL NOT CONDUCTED</b></p> <p>Counsel Donald McLeod appears for the defence. John Scutt appears for the Crown. Counsel expressly accepts responsibility for the JPT not going ahead as scheduled, due to the defence failing to file any materials. Another JPT is scheduled for April 26, 2013.</p>
<b>APRIL 26, 2013</b>	<p><b>JUDICIAL PRE-TRIAL NOT CONDUCTED</b></p> <p>Nobody appears for the defence. The Crown states that efforts were made to contact counsel, but nobody had called back. Matter remanded to May 2, 2013.</p>
<b>MAY 2, 2013</b>	<p><b>SPEAK TO</b></p> <p>Agent for counsel appears for the accused. Counsel is unable to attend due to a scheduling conflict. The accused does not appear. Mr. Justice Clark remarks that "this is getting a bit ridiculous" and says a bench warrant will be issued if the accused or counsel do not appear on the next date. Matter adjourned to May 15, 2013.</p>
<b>MAY 15, 2013</b>	<p><b>SPEAK TO</b></p> <p>Paula Seymour appears as agent for counsel. Ms. Seymour says that the accused was unaware of today's court date. Defence requests adjournment to May 17, 2013.</p>
<b>MAY 17, 2013</b>	<p><b>SPEAK TO</b></p> <p>Paula Seymour appears as agent for counsel. John Scutt appears for the Crown. Ms. Seymour says that, although counsel is not yet retained, the defence is prepared to schedule a JPT. A JPT is then scheduled for July 9, 2013. Mr. Scutt advises that earlier dates were offered by the court, but the defence required more time to finalize retainer.</p>
<b>JULY 9, 2013</b>	<p><b>JUDICIAL PRE-TRIAL NOT CONDUCTED</b></p> <p>Accused appears self-represented. There is confusion with respect to whether or not the JPT transpired. The matter is remanded to July 16, 2013 to allow for the accused to speak with counsel.</p>
<b>JULY 16, 2013</b>	<p><b>SPEAK TO</b></p> <p>The accused appears self-represented. John Scutt appears for the Crown. Mr. Scutt advises that the JPT needs to be rescheduled for September 12, 2013, the first available date for defence counsel. Matter adjourned to September 12, 2013.</p>
<b>SEPTEMBER 12, 2013</b>	<p><b>JUDICIAL PRE-TRIAL + 1<sup>ST</sup> TRIAL DATE SET</b></p> <p>Counsel Donald McLeod appears for the accused.</p> <p>A 7-day trial is set for May 12, 2014, judge sitting with a jury. Defence counsel does not put any earlier available dates on the record. A readiness date of March 17, 2014 is also scheduled.</p>
<b>MARCH 17, 2014</b>	<p><b>READINESS DATE</b></p> <p>New counsel is Paula Seymour, however she is unable to attend. Matter adjourned to March 19, 2014 for trial readiness.</p>

<b>MARCH 19, 2014</b>	<p><b>TRIAL READINESS</b></p> <p>Counsel Paula Seymour appears for the accused. Stuart Rothman appears for the Crown. Ms. Seymour says that she is concerned about her availability for the trial on May 12, 2014, as she has recently taken over for newly-appointed Donald McLeod. Ms. Seymour also says that she is going to speak with the accused about possibly finding another counsel to conduct the trial. Mr. Rothman expresses concern about the age of matter. Mr. Rothman further notes that former counsel Donald McLeod was appointed to the Superior Court of Justice five months before these scheduling issues came to the attention of the court. The matter is adjourned for one week to March 26, 2014.</p>
<b>MARCH 26, 2014</b>	<p><b>1<sup>ST</sup> TRIAL DATE ADJOURNED</b></p> <p>Counsel Paula Seymour appears for the accused. Stuart Rothman appears for the Crown. Ms. Seymour is not yet able to go on record and asks for an adjournment to allow for time to prepare for trial. Accused wants to stay with Ms. Seymour, rather than retain someone else for the trial. The Crown consents to the adjournment because defence waives 11(b). A follow-up JPT is set for April 24, 2014.</p>
<b>APRIL 24, 2014</b>	<p><b>JUDICIAL PRE-TRIAL + 2<sup>ND</sup> TRIAL DATE SET</b></p> <p>Counsel Paula Seymour appears for the accused. The accused appears as well. A second trial date is set for March 23, 2015. Accused re-elects judge alone.</p>
<b>SEPTEMBER 15, 2014</b>	<p><b>READINESS DATE</b></p> <p>Counsel Paula Seymour appears for the accused. Ms. Seymour is still not retained. A further readiness date is scheduled for January 22, 2015.</p>
<b>JANUARY 22, 2015</b>	<p><b>READINESS DATE</b></p> <p>Counsel Paula Seymour appears for the accused. Ms. Seymour is fully retained. The matter is adjourned to the trial date on March 23, 2015.</p>
<b>MARCH 23, 2015</b>	<p><b>2<sup>ND</sup> TRIAL DATE (DAY 1 OF 5) – TRIAL NOT COMMENCED</b></p> <p>Counsel Paula Seymour appears for the accused. Stuart Rothman appears for the Crown. There is no court available. The matter is adjourned to the following day to wait for a courtroom.</p>
<b>MARCH 24, 2015</b>	<p><b>2<sup>ND</sup> TRIAL DATE (DAY 2 OF 5) – TRIAL NOT COMMENCED</b></p> <p>NO TRANSCRIPT PROVIDED: the respondent accepts the facts as outlined in the applicant's summary</p>
<b>MARCH 25, 2015</b>	<p><b>2<sup>ND</sup> TRIAL DATE (DAY 3 OF 5) – TRIAL NOT COMMENCED</b></p> <p>NO TRANSCRIPT PROVIDED: the respondent accepts the facts as outlined in the applicant's summary. However, it is unclear if the court offered any earlier available dates than November 9, 2015.</p>
<b>NOVEMBER 9, 2015</b>	<p><b>3<sup>RD</sup> TRIAL DATE</b></p>