Case File No. 4860-000-00-AF439126-00

THE ONTARIO COURT OF JUSTICE

in the matter of the *Provincial Offences Act, R.S.O. 1990*

HER MAJESTY THE QUEEN

vs.

C. JAMES CASSIMATIS

* * * * * * * *

R U L I N G O N M O T I O N

BEFORE HIS WORSHIP JUSTICE OF THE PEACE M. CONACHER

On February 16, 2010 at

70 Centre Avenue, TORONTO, Ontario

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Appearances:

Mr. T. Porter — Municipal Prosecutor

Mr. W. Braganza — Agent for the Defendant

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EXHIBITS

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Transcript Ordered: March 15, 2010

Transcript Completed: April 21, 2010

APR 22 2010

Ordering Party Notified: _____

TUESDAY, FEBRUARY 16, 2010

R U L I N G

CONACHER, J.P. (Orally):

I have to say, there is something very affecting actually about someone who is prepared to assert their Charter rights with respect to a matter that has to be regarded and, in fact, has been regarded by Appeal Court decisions as the most minor of regulatory matters, but it has been said as well that the Charter applies at this level as well as to matters that would be regarded by society as far more serious issues dealing with the social order.

This is an allegation of a very simple parking infraction, one that does not inherently involve public safety issues but, rather, involves the use of public space on street parking and the requirement by the City that, if an operator or an owner of a vehicle wishes to use parts of the public roadway to park their vehicle ,they are required to pay for it and, in this case, the charge is that proof of payment was not made.

Having said that, Mr. Cassimatis being charged with an offence, as minor as it might have been, asserted his right to a trial, which is a fundamental right in our society, by filing, as he is required to do under the Provincial Offences Act Part II, that part that applies to the City of

Toronto, not section 17 but, rather, section 17.1. Section 17 is not relevant to these proceedings as The City of Toronto is a designated region for the purposes of the Provincial Offences Act.

There are two issues here: Mr. Cassimatis, through his representative, is asserting a breach of his section 7 Charter right and section 11(b) Charter right. The Supreme Court of Canada decision in *R.v. Morin* applies to these proceedings as it does to any other case, whether be it criminal, federal, statute, other provincial offence matters. The Court of Appeal endorsement in the *Omarzadah* decision by Justice Doherty makes it clear that the *Morin* decision is to be used as the template analysis for these proceedings.

Now, in doing that, the Court has two concerns in this matter, Mr. Prosecutor: one is that the defendant filed, according to the court record, his request for trial on November the 26th, 2008. The notice of trial was issued on the 2nd of November 2009. So, the first issue here is the protracted delay between the filing of the request for trial and the issuing of the trial notice, and Justice Casey has indicated in his decision that the ten months delay in the issuing of a notice of trial is inherently unreasonable. In this case, we have almost a 12-month delay.

The *Morin* decision requires the Court to identify the overall period of delay before entering into

the analysis, and certainly any period of more than a year for a minor regulatory matter has to be considered, on the face of it, unreasonable.

With respect to the period under consideration that initial "intake" period Justice Casey referred to of being almost a year is patently unreasonable. In the particular case that he had before him, he was citing a two-month period as an appropriate timeframe, in that particular case, for intake purposes.

I'm not prepared to ascribe the delay from the original trial date of December the 8th to today's date to anything other than the purpose for the filing of the further documents, but even with that initial period, the trial date of the 8th of December, given the lengthy delay in the issuing of the notice of trial which, as I said, was certified by the court to have been issued on the 2nd of November, some five weeks prior to the trial date, within that timeframe the defendant is compelled to file the disclosure request to obtain disclosure to prepare the defence. It is patently unreasonable.

Coupled with that is the disclosure request itself. While, understandably, the first request, having been given to the prosecutor, and I accept this, on November the 12th or thereabouts, it is understandable the prosecutor could not respond within that timeframe either, so it places an

unreasonable burden on the prosecutor as well.

With the remand having been ordered to today's date and the second disclosure request being filed on December the 24th, that request ought to have been satisfied by today's date or, at the very least, responded to. I'm not ruling on whether or not the items requested in that disclosure request are reasonable or appropriate or should have been provided, but, at a minimum, there should have been a response accorded to the defendant so that the defendant would know where they stood, if today they had to go to trial.

This Court made a ruling in the case of *R.v. Rowan* which is one of the cited cases in the Provincial Offences annotated version, the Segal and Libman version. Part of the ruling in that case had to do with anticipated delay; in other words, the Defence would not be in a position to proceed today because the disclosure request has not been responded to. They would be entitled to a further adjournment, and that anticipated delay would have to lie at the feet of the Prosecution. So, we have two significant and, on the face of them, unreasonable periods of delay, neither one which lay at the feet of the defendant. First of all, the delay in issuing the notice of trial which took almost a year to issue and provided a notice period of only five weeks from the issuing of the notice. In fact, it would have been four weeks if we compute the timeframe as provided in the rules

of the Ontario Court of Justice where that notice would have been deemed to be delivered seven days later. Then, we have the section 7 breaches, the failure to respond to the disclosure request, either the initial disclosure request, and that may not have purely been the prosecutor's fault but, rather, arises because of the institutional delay in issuing the notice of trial but, then, there is the second delay. The disclosure request was immediately filed, again with the prosecutor's office, on December the 24th, 2009, and, to date, there was no response provided to the defendant.

So, I find, for all of those reasons, the defendant's right to a trial within a reasonable time, and even though the prejudice is the most minimal kind in terms of potential penalties, etcetera, those consequences, nevertheless, the simple breach of the Charter right to a trial within a reasonable time and the right to be able to make full answer in defence has to be accorded some weight.

So, for both those reasons, both because of the unreasonable delay, neither of which is attributable to the defendant, and there's been no argument advanced that would justify the delay that would save it under section 1 of the Charter as well as the defendant's right to make full answer in defence having been breached and, again, without an adequate explanation that would save that breach or render it reasonable in all the

circumstances, the only remedy available is a stay of proceedings and that stay is granted.

FORM 2

CERTIFICATE OF TRANSCRIPT

(EVIDENCE ACT, SECTION 5(2))

I, **Danielle White**, certify that this document is a true and accurate transcript of the recording of **Brenda Hilt** in the matter of ***R.v. C. James CASSIMATIS*** in the **Provincial Offences Court** held at **60 Queen Street West, Old City Hall** taken from Recording No. **C1 20100216 083553**, which has been certified in Form 1.

APR 2 1 2010

(Date)

D White

(Signature of Authorized Person)

Danielle White