Case Name:

R. v. Cheung

Between
Her Majesty the Queen, and
Mei-Yee M. Cheung

[1992] O.J. No. 4016
No. 147869/91

Ontario Court of Justice (Provincial Division)
Newmarket, Ontario
Lampkin Prov. J.

Oral judgment: August 13, 1992.
(19 paras.)

Civil rights — Trials, due process, fundamental justice and fair hearings — Criminal and quasi-criminal proceedings — Speedy trial, accused's right to — What constitutes within a reasonable time — Canadian Charter of Rights and Freedoms — Remedies, stay of proceedings.

Application by the Crown to set aside a stay granted to the accused Cheung for a breach of his right to be tried within a reasonable time contrary to the Canadian Charter of Rights and Freedoms. Cheung was charged with a highway traffic offence on November 5, 1991. On November 25, he indicated an intent to defend. On December 4, he was informed that a trial date was set for March 20 1992. He obtained a stay for unreasonable delay.

HELD: Application allowed and a new trial ordered. The time began to run when Cheung gave notice that he intended to defend. The trial date was set over for hearing for just under four months, which was not unreasonable in the circumstances.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, ss. 11(b), 24(1).
Highway Traffic Act.
Provincial Offences Act.

Counsel:

J. O'Halloran, for the Crown.
No counsel mentioned for Mei-Yee M. Cheung.

¶ 1 **LAMPKIN PROV. J.** (orally):— The Crown applies to set aside a stay granted pursuant to s. 24(1) of the Charter on the ground that the defendant's right in this matter, guaranteed by s. 11(b) of the Charter, for a trial within a reasonable time has been breached.

¶ 2 The defendant was charged on the 5th day of November, 1991, at 5:30 p.m. at Denison Street near number 1661 in the Town of Markham with the offence of failing to yield from a private road, contrary to the Highway Traffic Act.

¶ 3 Prior to entering the plea a motion was made requesting that the charge be stayed because of unreasonable delay.

¶ 4 A short history of the proceedings would be necessary to determine whether the learned Justice of the Peace came to the appropriate decision.

¶ 5 The Certificate of Offence was delivered to the defendant on November 5th, 1991. Under the provisions of the Provincial Offences Act when a Certificate of Offence has been delivered, it gives the defendant 15 days within which to indicate to the court whether a plea of guilty will be made or alternatively, whether a plea of guilty with an explanation will be made, or further, whether the matter would be defended. If nothing is done within that 15 day period then when the Certificate is filed by the Officer in the court, there would be an entering of a plea of guilty on the basis that the defendant had done nothing.

¶ 6 It appears from the decision of the learned Justice of the Peace that the defendant in this matter did attend on November 25th, 1991, or at least indicated on November 25th, 1991, that the matter would be defended, and I'm looking at page 9 of the Reasons, at line 20. A request for trial on November 25th was made.

¶ 7 Pursuant thereto, on December the 4th, 1991, the court forwarded to the defendant, by mail, a notice of the trial date for March 20th, 1992.

¶ 8 The jurisprudence is quite clear that the time begins to run from this time of the charge. That is in an ordinary criminal matter where an Information is sworn - from the time of the swearing of the Information, which then calls upon an accused person to do something, attend court at a particular time.

¶ 9 In Provincial Offences Matters, however, certainly, when the charge is by way of Certificate of Offence, it would appear to me that the time really begins to run, not from the time of the delivery of the Certificate, which in this case would have November 5th, 1991, but from the time when the defendant indicates to the court that he or she wants a trial, because up to that time no one knows whether the defendant will plead guilty or do nothing, or indeed, plead not guilty and want a trial. So the time really begins to run, in this case, from November 25th, 1991, when the court received notice that the matter would be defended.

¶ 10 The matter was then set over for hearing to March the 20th, 1992, which would be about five days short or four months.

¶ 11 It is also the jurisprudence that if the court comes to the opinion that that initial time is unreasonable, then is when the inquiry is to be triggered. The court has to examine the factors, first, the time limit; the reasons for the delay, including lack of institutional resources; any prejudice to the accused; and whether there has been any waiver.

¶ 12 It would appear to me, that somewhat less than four months is certainly not unreasonable in the circumstances. There is no evidence indeed, that there had been any comparison with other jurisdictions. Indeed, the reasons seem to suggest that other jurisdictions have up-held periods somewhat in excess of five months as acceptable.

¶ 13 Even if I were to hold, which I don't, that the time here, five days short of four months, was unreasonable, there is really no prejudice to the accused that I can see. The usual prejudice of someone being charged with a criminal offence of theft; robbery; sexual assault; fraud, really cannot be said to apply to a person charged with an offence under the Provincial Offences Act, certainly not one of failing to yield from a private road or speeding. There is no social stigma that is attached to that type of offence. In criminal offences when a person is charged, all sorts of things are imagined against them, that he is a criminal, as the case may be; that he is an incestuous person, a thief, and so on. But you speed on the highway, as so many people are wont to do, where really, is the "disgrace" to be visited upon that person by family and friends, because of an infraction of that nature? I honestly do not see any evidence of prejudice in a case of this nature. There is not going to be any loss of business. A person charged with a criminal offence, he or she, depending upon the status of the person or employee as the case may be, may very well be suspended from duty, sometimes with or without pay, depending

on the seriousness of the offence. Nobody is ever suspended for failing to yield or careless driving as the case may be, or speeding on the highway. Where is the prejudice? I see no prejudice whatsoever.

¶ 14 I don't have to deal with waiver because this was the first time the matter had come on to court, on March the 20th, when the stay was granted. With respect, it appears that the learned Justice of the Peace did not apply his mind to the four factors which the courts have laid down must be considered before a stay is granted. And as I said before, I am not satisfied indeed, that even an inquiry ought to have been triggered in this particular case.

¶ 15 The appeal will be allowed, the stay set aside, and a new trial ordered.

¶ 16 MR. O'HALLORAN: Your Honour, it appears that the next date available for the trial for this matter of Mei-Yee Cheung is the 29th day of October ....

¶ 17 **THE COURT**: Okay.

¶ 18 MR. O'HALLORAN: .... this year, in 100 Court, at 3 p.m.

¶ 19 **THE COURT**: Court 100, 3 p.m. Okay. October 29th, 1992, Court 100, 3 p.m.

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