

Date: 1998 07 15  
Docket: CR 03132

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**HER MAJESTY THE QUEEN**

Respondent

- and -

**J. F. G.**

Applicant

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Application for judicial stay of proceedings based on infringement of Charter rights.  
Dismissed.

Heard at Yellowknife, NT, on: June 1, 1998

Reasons filed: July 15, 1998

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REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Applicant: Hugh R. Latimer

Counsel for the Respondent: Loretta Colton

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**REASONS FOR JUDGMENT**

[1] At the commencement of his jury trial on June 1, 1998, the accused through his counsel sought a judicial stay of proceedings against him, based on infringement of his Charter rights. Upon hearing oral argument, the Court dismissed the accused's application, with reasons to follow. These are those reasons.

[2] Written argument was filed on behalf of the accused in support of this application on the eve of his trial. That document commences with an assertion that the particular Charter rights which are alleged to have been infringed are those contained in s.7 (the right not to be deprived of one's liberty except in accordance with the principles of fundamental justice) and in s.11(b) (the right to trial within a reasonable time). Yet elsewhere in that document, and in oral argument of his counsel, the submission regarding undue delay was withdrawn. The sole remaining basis on which the accused seeks a judicial stay of the charges before the Court is an assertion that the accused has lost the opportunity to call two defence witnesses as a result of the Crown's malicious prosecution of him on a separate but related charge (a charge not presently before the Court).

[3] For an understanding of this novel assertion a summary of preceding events and circumstances is necessary. In 1995 the accused was charged with committing two sexual offences against his former stepdaughter, L.B., in the time period 1967-1975. At that time L.B. was 7-14 years of age. Today she is 36 years of age. A preliminary inquiry was held in March 1996 and the accused was committed to stand trial in this Court before judge and jury.

[4] In December 1996 the accused sought a stay of proceedings with respect to the L.B. charges, primarily on the basis of pre-charge delay. That application was dismissed.

[5] In February 1997 the accused was charged with committing an additional sexual offence in 1968-69. The complainant was M.R., who had been a childhood friend and neighbour of L.B., and who alleged an incident of sexual molestation while she stayed overnight in the accused's household on a date within the time period 1968-69. A preliminary inquiry with respect to the M.R. charge was held in May 1997. The accused was committed to stand trial in this Court before judge and jury. Notwithstanding the committal, the preliminary inquiry judge commented on the weakness of the Crown case. The accused made no application to challenge or set aside the committal for trial on the M.R. charge.

[6] The Crown filed an indictment in this Court containing three counts -- the two L.B. charges and the M.R. charge -- and the matter was set for trial. The accused made no application for severance.

[7] A trial was held before a jury in October 1997. The jurors found the accused not guilty of the M.R. charge, and were unable to agree upon a verdict with respect to the L.B. charges.

[8] It is at the commencement of the second trial of the L.B. charges that the accused makes the within application for a judicial stay of those charges.

[9] At the core of the accused's application is his submission that the Crown's prosecution of the M.R. charge was a "malicious prosecution". As a foundation for this grave submission the accused merely points, *ex post facto*, to:

- a) the frailties in the evidence of the complainant M.R.; i.e., inconsistencies between her initial statement to police and her subsequent testimony,
- b) the *obiter* comment of the preliminary inquiry judge regarding the "weakness" of the Crown case at the preliminary inquiry of the M.R. charge,
- c) the accused's speculation that the M.R. charge was added to the main indictment merely to bolster the Crown's position on the L.B. charges,
- d) the jury's verdict of "not guilty" on the M.R. charge.

[10] With respect, there is simply no merit or substance to the allegation of malice on the part of the Crown. Advancing a weak Crown case does not amount to malicious prosecution.

[11] In any event, the argument advanced on behalf of the accused on this application proceeds from a malicious prosecution of the M.R. charge to a statement that that prosecution is “inextricably entwined” with the present prosecution of the L.B. charges. The accused then states that M.R.’s father K.R. and her brother B.R. had been subpoenaed to give peripheral evidence as defence witnesses at the October 1997 trial of the L.B. charges. Their expected evidence, as former neighbours of the accused in the 1960's and 1970's was to the effect that they at that time had not noticed anything unusual within the accused’s household or in his relationship with his stepdaughter L.B. The accused states that the Defence did not in fact call K.R. and B.R. as witnesses at the October 1997 trial, and are reluctant to call either of them at the retrial of the L.B. charges, because of the allegation that their daughter/sister M.R. has made against him (the accused) which allegation was formally advanced in Court by the Crown. The accused is thus suggesting that it is the Crown’s fault that the accused’s proposed witnesses have become alienated from him. I admit to some difficulty with the logic of that submission. Surely one must take a witness as one finds the witness, and then decide whether to call the witness.

[12] It has not been shown that the accused did not have a fair trial in October 1997 when the jury acquitted him of the M.R. charge and was unable to reach a verdict on the L.B. charges. There is no injustice in the holding of a second trial of the L.B. charges before a new jury. On this application the accused has not shown that he is not being dealt with in accordance with the principles of fundamental justice.

[13] For these reasons the application to stay proceedings on the L.B. charges is dismissed.

J.E. Richard,  
J.S.C.

Dated at Yellowknife, NT, this  
15th day of July 1998

Counsel for the Applicant: Hugh R. Latimer  
Counsel for the Respondent: Loretta Colton

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