

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TIMOTHY JOHN COCKNEY

MEMORANDUM OF DIRECTIONS

I have Mr. Latimer's motion for a stay. I note that it is returnable on September 8th, being the opening of the jury assizes. You are undoubtedly aware that this case is scheduled for the third week of the assizes (September 22 to 26). The jury panel will be returning on September 22nd for jury selection for this case.

I am the designated trial judge for this case so I will hear the motion. This cannot be done on September 8th but I suggest we do it prior to September 22nd. Therefore I am suggesting that it be heard on Tuesday, September 16, 1997. If it is impossible to do so on that date counsel should notify me as soon as possible. Unless counsel contact me, we will proceed on that date.

In reviewing the motion, I take it that the application is brought on two grounds: (a) delay; (b) interference with the solicitor-client relationship. While the relief requested is not worded in a clear-cut manner, I also gather (from my reading of paragraph 2 of the Notice of Motion) that the defence is seeking an order excluding the February 28 statement from the trial (although I have no indication that the Crown plans to rely on it).

With this in mind, I hereby issue the following directions:

1. Unless otherwise directed by me, this motion will be heard on Tuesday, September 16, commencing at 10 a.m. The location of the hearing has yet to be determined since all facilities in the Court House are currently booked. Counsel should check with the Clerk.
2. It will be the responsibility of defence counsel to obtain a removal order requiring the accused's presence at the hearing.
3. Paragraph 1 of the Notice of Motion is drafted in the first person as if the accused is making the statements. This is unacceptable. Defence will have to file an affidavit from the accused putting under oath those facts within his knowledge that he relies on.
4. With respect to the issue of delay, I expect Crown counsel to prepare and file a detailed chronology of all events in this prosecution.
5. With respect to the interference issue, and particularly the issuance of the subpoena to Mr. Latimer, I direct Crown counsel to file an affidavit, or to be prepared to call viva voce evidence, so as to disclose what material evidence Crown counsel anticipates Mr. Latimer can provide (in satisfaction of s.698(1) of the Criminal Code).

6. I note paragraph 4 in Mr. Fuglsang's affidavit. It is meaningless since it is based on information and it is conclusionary. If this argument is to be advanced, it must be supported by evidence, either by affidavit or viva voce, from someone with personal knowledge of the facts.

7. If the admissibility of the February 28 statement is an issue, then I expect counsel to be prepared to deal with it at this hearing.

8. All affidavits and other evidentiary material, and any case law or other authorities, to be relied on must be filed and exchanged by September 12, 1997.

If further directions are required, counsel should contact me.

A handwritten signature in cursive script, appearing to read "John Vertes", with a horizontal line extending from the end of the signature.

J. Z. Vertes
J.S.C.

To: Bernadette Schmaltz,
Crown Counsel

Hugh Latimer,
Counsel for the Defence

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**MEMORANDUM OF DIRECTIONS
of The Honourable Justice J. Z. Vertes**

