This document is an unofficial English translation of the Reasons of Judgment of the Honourable Justice L.A. Charbonneau dated December 12, 2013. This document is placed on the Court file for information only.

R. v. Latour, 2013 NWTSC 95.cor1

Date: 2013 12 12
Docket: S 1 CR 2012 000063

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

HUGUES LATOUR

Corrected judgment: A corrigendum was issued on December 18, 2013; the corrections have been made to the text, and the corrigendum is appended to this judgment.

Motion to stay proceedings (sections 11(*b*) and 24(1) of the *Canadian Charter of Rights and Freedoms*).

Heard at Yellowknife, NT, on August 6, 2013.
Oral reasons for judgment delivered: August 9, 2013.
Reasons filed: December 12, 2013.

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for Her Majesty the Queen: Marc Lecorre

Counsel for Hugues Latour: Serge Petitpas

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REASONS FOR JUDGMENT

[1] Hugues Latour was scheduled to face trial on August 12, 2013, on charges laid against him in October 2011. Before the trial started, he filed a motion for a stay of proceedings, alleging that his right to be tried within a reasonable time had been violated.

[2] This motion was heard by the Court on August 6, 2013, and dismissed on August 9, 2013. The parties were advised that written reasons for judgment would follow.

[3] It was not possible to empanel a full jury on August 12, 2013, so a mistrial was declared. A few weeks later, the Crown directed a stay of proceedings. As such, the outcome of Mr. Latour's motion is now moot. However, beyond the facts of the case, his motion raised issues of general interest concerning the administration of justice in the Northwest Territories. Accordingly, I still find it necessary to provide my reasons for having dismissed it.

(B) FACTS

1. Preliminary remarks

[4] In support of his motion, Mr. Latour filed transcripts of all appearances before the Territorial Court of the Northwest Territories (the Territorial Court) in this matter.

[5] The transcripts show a procedural history that seems somewhat complicated because at the time the charges in this case were laid, Mr. Latour was facing charges in a number of other cases, most of them unrelated to each other. However, practically speaking, those other cases did not have any real impact on the delays in the present case.

[6] In addition to the transcripts, Mr. Latour filed, in support of his motion, an affidavit setting out the procedural steps in this case, starting from when the charges were laid. This affidavit also details the impact that the proceedings had on him and the prejudice they caused him. The Crown did not cross-examine him on this affidavit.

[7] The affidavit includes as exhibits copies of documents from the Court's file. In considering the motion, I also reviewed other documents from the Court's file, which provided additional context. In addition, I took judicial notice of certain matters concerning the functioning of courts of in the Northwest Territories.

[8] The Crown did not introduce any evidence at the hearing of this motion. This is understandable for the most part, since the transcripts and many of the documents speak for themselves. However, in some respects, it would have been helpful for the Court to have additional information about certain aspects of the case, particularly concerning the information provided by the Crown about its availability for trial at the time a trial date was to be scheduled. I will come back to this issue later on in these Reasons.

2. Procedural history

[9] The events that led to the charges against Mr. Latour date back to September 2011. An information was sworn on October 11, 2011. Mr. Latour made his first appearance before a justice of the peace the next day. This first appearance was followed by several more before the Territorial Court, on October 14, 2011;

October 20, 2011; December 6, 2011; December 13, 2011; January 25, 2012; January 31, 2012; February 14, 2012; March 13, 2012; March 20, 2012; March 27, 2012; and May 9 to 11, 2012.

[10] Without reviewing all the details of each of these appearances, it is helpful to note the following: the Crown replaced the information sworn on October 11, 2011, with a new one dated January 31, 2012; the Crown made its election to proceed by indictment on March 13, 2012; Mr. Latour elected to be tried by judge and jury on March 20, 2012; and on March 27, 2012, the preliminary inquiry was scheduled to proceed in May.

[11] On May 11, 2012, at the end of the preliminary inquiry, Mr. Latour was committed for trial. In accordance with the usual practice of the Court, the office of the Clerk of the Court sent the parties a letter, dated June 13, 2012, asking them, among other things, to contact the Court to schedule a date for the pre-trial conference. The letter also asked the parties for submissions regarding the trial date:

> (. . .)
>
> Further, the Court requests that counsel jointly prepare a pre-trial conference report (pursuant to Rule 80) in Form 6 (attached) to be presented to the trial judge. In this regard you are requested to contact Maryse Good or Erin O'Rourke in the Judge's Chambers at 873-7105 or 873-7253 within 30 days of the date of this letter to schedule a pre-trial conference with one of the judges.
>
> Also, in order that the Court might schedule a trial date, the Court requests your cooperation by providing to the Court, within 30 days of the date of this letter, any submissions you have as to the trial date.
>
> (. . .)
>
> *Affidavit of Hugues Latour*, Exhibit "C"

[12] A pre-trial conference was held on August 21, 2012. A number of issues were discussed. Counsel for Mr. Latour stated that he planned to file a motion to have certain items of evidence excluded under sections 8 and 24(2) of the *Charter*. It was agreed that the motion would be heard on December 11 and 12, 2012.

[13] Counsel for Mr. Latour also said at this pre-trial conference that, depending on the scheduled date for the trial, he might file a motion for a stay of proceedings

based on paragraph 11(*b*) of the *Charter*: *Pre-Trial Conference Memorandum, August 21, 2012*.

[14] By the time the first pre-trial conference was held, counsel for Mr. Latour had already sent the Clerk of the Court a list of his available dates up to April 2013. The Crown had not yet sent in its availability. The Court asked the parties to submit a list of their available dates up to the end of August of 2013 as soon as possible so that a trial date could be set.

[15] On August 22, counsel for Mr. Latour submitted additional information concerning his availability. The Crown submitted its own list of available dates to the Clerk on September 4. Counsel for Mr. Latour then sent, on September 6, another update concerning his availability.

[16] In light of this correspondence, the first period during which both the Crown and the Defence would be available for the trial was June 10 to 28, 2013. Unfortunately, the Court could not schedule proceedings during those weeks. The next date both parties would be available was in August. On September 17, 2012, a docket scheduling the trial for August 12, 2013, was issued.

[17] The motion to exclude evidence was heard as scheduled on December 11, 2012. The decision on that motion was issued on March 8, 2013 (*R.* v. *Latour*, 2013 NWTSC 15).

[18] A second pre-trial conference was held on June 7, 2013. At this conference, the Defence confirmed that it intended to file a motion to stay proceedings based on paragraph 11(*b*) of the *Charter*. It was agreed that this motion would be heard on August 6, 2013: *Pre-Trial Conference Memorandum, June 7, 2013*.

[19] Mr. Latour was in custody when the charges were laid, having been arrested and detained in connection with another case on September 26, 2011. He eventually applied to the Territorial Court for bail in August 2012. The application was denied, and Mr. Latour remained in custody.

[20] On January 18, 2013, he applied for a bail review. On January 24, 2013, this application was granted, and the Court ordered that he be released on a recognizance. Mr. Latour's parents agreed to stand as sureties for an amount of $40,000.00, with a deposit of $20,000.00. Mr. Latour was released on February 1, 2013.

[21] The recognizance included several conditions requiring Mr. Latour, among other things, to observe a curfew; to report in person to a police station three times a week; to surrender his passport; to reside with his parents, with restrictions on his mobility; to not be in the presence of a person under the age of 18 unless one of Mr. Latour's parents was present; to refrain from consuming or possessing alcohol or from being in a licensed establishment, except for a restaurant; to not use a computer or any Internet-enabled device except in the presence of one of his parents; to not use a camera or any device capable of making video recordings or taking photographs, except for work-related purposes; to file with the Clerk proof of purchase of an airplane ticket to travel to Yellowknife for his trial; and to surrender himself to the Yellowknife Detachment of the Royal Canadian Mounted Police no later than August 10, that is, two days before the beginning of his trial.

[22] Mr. Latour surrendered himself to the R.C.M.P. on August 10, 2013, and remained in custody until a mistrial was declared on August 13, 2013.

(C) ANALYSIS

1. Legal framework

[23] Paragraph 11(*b*) of the *Charter* reads as follows:

> 11. Any person charged with an offence has the right
>
> . . .
>
> (*b*) to be tried within a reasonable time . . . .

[24] The principles that apply when this provision is invoked were laid down and clarified in a series of judgments of the Supreme Court of Canada, among others, *R.* v. *Smith*, [1989] 2 S.C.R. 1120; *R.* v. *Askov*, [1990] 2 S.C.R. 1199; *R.* v. *Morin*, [1992] 1 S.C.R. 771; and *R.* v. *Godin*, [2009] 2 S.C.R. 3. The legal framework governing Mr. Latour’s motion is therefore well established.

[25] The purpose of paragraph 11(*b*) of the *Charter* is the protection of the individual rights of an accused person and of the interests of society as a whole: *R.* v. *Morin*, *supra*, p. 786.

[26] On the one hand, as regards the individual rights of the accused, paragraph 11(*b*) protects the right to security of the person by seeking to minimize

the anxiety, concern and stigma of facing criminal charges. It protects the right to liberty by seeking to minimize exposure to the restrictions on liberty which result from pre‑trial incarceration and restrictive bail conditions. It also protects the right to a fair trial by attempting to ensure that proceedings take place while evidence is available and fresh: *R.* v. *Morin*, *supra*, p. 786.

[27] Society as a whole also has an interest in seeing that there is no unreasonable delay in criminal trials: trials held promptly enjoy the confidence of the public. Society also has an interest in ensuring that those who are charged with offenses are brought to trial and dealt with according to the law: *R.* v. *Morin*, *supra*, p. 786.

[28] The factors to be considered in analyzing whether a delay is unreasonable in a given situation include the length of the delay, waiver of time periods by the accused, the reasons for the delay, and prejudice to the accused: *R.* v. *Morin*, *supra*, pp. 787-88.

[29] To assess these factors, a court must analyze the record meticulously, particularly to determine whether the accused waived his or her rights and what the causes for the delay were. A court must not embark on this in-depth analysis unless the time between the laying of charges and the trial date is sufficiently long, on its face, to cast doubt on its reasonableness.

2. The delay in the case at bar

[30] In the present case, the time between the commencement of proceedings and the trial date was 22 months (from October 11, 2011, to August 13, 2013). I am not convinced that this delay, on its face, raises issues as to its reasonableness in the context of a jury trial held in the Northwest Territories. This is based on my assessment of what is an acceptable institutional delay in the specific context of our jurisdiction. In fact, this Court recently held that an institutional delay of 22 months is not unreasonable *per se*: *R.* v. *Caesar* 2013 NWTSC 65, paras. 18-24.

[31] Notwithstanding this, given the issues raised by the parties, I think it would be useful to conduct a detailed analysis of the circumstances of the case, and apply the factors set out in the case law.

(a) Waiver

[32] In my view, it is clear that Mr. Latour did not, explicitly or implicitly, waive his right to be tried within a reasonable time. Whether the delay in this case was reasonable or unreasonable depends on the assessment of the causes for the delay and of the prejudice that Mr. Latour suffered as a result of this delay.

(b) The causes for the delay

(i) The various causes for the delay

[33] In *Morin*, the Supreme Court of Canada recognized that in criminal cases, certain delays are inevitable. Some of these delays are inherent to the case and are part of a preparatory process that is to be expected in such proceedings. The more complex the case is and the larger the body of evidence is, the more likely it is that the preparatory stages will take time.

[34] On the one hand, the Crown is required to disclose its evidence to the accused. In cases involving a vast amount of evidence, this may lead to additional delays. If the alleged offences are hybrid offences, the Crown may need a certain amount of time to decide whether it will proceed by summary conviction or by indictment. In jurisdictions like the Northwest Territories where there is no formal charge approval process by the Crown, the Crown must sometimes also decide, in light of its assessment of the evidence, whether it would be more appropriate to proceed with charges different from the ones that the investigators chose to lay. Generally speaking, if such is the case, a replacement Information may be sworn to replace the original one, as was done in this case.

[35] In addition, an accused and his or her counsel need time to review and analyze the evidence, to decide what approach to take on the case including, where applicable, what mode of trial the accused should choose.

[36] So-called “institutional” delays are another factor that contributes to inevitable delays before a matter goes to trial. These are delays that arise when both parties are ready to proceed but the resources are not immediately available for the court to hear the matter.

[37] In addition, one party or the other may be directly responsible for part of the delay. In such cases that party cannot rely on this part of the delay in support of its position: *R.* v. *Morin*, *supra*, pp. 793-94.

[38] Finally, there may be delays that do not fall under any of these categories. A judge's illness, a judge's delay in rendering judgment on an interlocutory matter, a recusal, or other chance occurrences may contribute to the delay and must also be considered when assessing a motion based on paragraph 11(*b*): *R.* c. *Camiran*, 2013 QCCA 452, at para. 19.

[39] The parties acknowledge that part of the delay in this case was inherent and institutional. However, they have differing views about other aspects of the delay. For example, Mr. Latour submits that the Crown is entirely to blame for the delay up to the preliminary inquiry. The Crown, meanwhile, argues that this delay is inherent to the process and was in part caused by Mr. Latour. It is therefore necessary to examine more closely the events that contributed to the delay, before and after the committal for trial.

(ii) The time between the laying of charges and the committal for trial

[40] The time between the initial laying of charges (October 11, 2011) and the committal for trial (May 11, 2012) was seven months. The parties were ready to set a date for the preliminary hearing at the appearance on March 27, 2012. The time between this date and the date the preliminary hearing began (May 10, 2012) is an institutional delay.

[41] This institutional delay is not at all unusual in the context of the Northwest Territories. The Territorial Court is a circuit court. The only community where it sits every week is the city of Yellowknife. For the rest of the communities, the Court sets a schedule for the circuits. This has an impact on all stages of proceedings: when a case is postponed to perfect the disclosure process, or to allow the parties to assess their positions, it must generally be adjourned to the next circuit, which may not take place until several weeks later.

[42] That being said, the total time of seven months from the laying of charges to the preliminary inquiry seems, at first glance, longer than one would normally expect. As the transcripts show, the Territorial Court regularly sits in Inuvik. There were several circuits, and numerous adjournments, between the first appearance and the time when a date for the preliminary inquiry could finally be set.

[43] In its written submissions, the Crown argued that part of the delay before the scheduling of the preliminary inquiry was attributable to Mr. Latour because he delayed his election as to the mode of his trial. This argument is without merit, as even the Crown acknowledged at the hearing of the motion. Mr. Latour was charged with hybrid offences, which meant that the Crown had to decide whether it would proceed by summary conviction or by indictment. Until the Crown made its election, Mr. Latour had no choice to make as to his mode of trial.

[44] The Crown did not make its election until March 13, 2012, five months after the proceedings began. Mr. Latour chose his mode of trial one week later, on March 20. He can hardly be accused of having taken too much time to make his election.

[45] Mr. Latour argues that the Crown is responsible for part of the delay because it took a long time before he received full disclosure, and before the Crown made the decision to proceed on a replacement Information. With respect to disclosure, this was not a highly complex case, but I acknowledge that the issues raised by the challenge to the search warrant added a level of complexity to the matter and expanded the burden on the Crown in terms of disclosure of the evidence.

[46] As for the decision to proceed on a replacement Information, it is unclear that it caused additional delays. It is the time the Crown took to make its decision to proceed by indictment that seems to have delayed things more than anything else.

[47] Another factor that delayed the proceedings is the fact that, at his first appearance, Mr. Latour was not advised of his right to be tried in French. Mr. Latour submits that this aspect of the delay is attributable to the Crown. In my view, such is not the case because the courts are responsible for notifying an accused of this right. It is not an inherent delay, in the strictest sense, since it is the result of an error. If any portion of the delay is attributable to this, it falls within the residual category referred to above, at Paragraph 38.

[48] To me, one thing is clear: Mr. Latour is not responsible for any portion of the delay between the laying of the charges and his committal for trial. The Crown bears part of the responsibility for this delay. The fact that Mr. Latour was not advised of his language rights at the beginning of the proceedings also contributed to the delay.

[49] That said, it is difficult to assess by how many weeks or months the delay could have been reduced had the Crown made its election earlier and had Mr. Latour

been advised right from the start of his right to a trial in French. There are very few Francophone lawyers practising in the Northwest Territories, and all the lawyers are very busy. It is therefore very likely that there would have been delays related to the availability of counsel, even if Mr. Latour had been advised of his rights and had asked for a trial in French at the beginning of the proceedings, and even if the Crown had made its election at one of the initial court appearances.

[50] Despite this uncertainty, in the overall assessment of the reasonableness or unreasonableness of the entire delay, I conclude that the Court must take into account the fact that the Crown's approach, combined with the Court's error in failing to inform Mr. Latour of his language rights, delayed the case's progress by a few months. The rest of the time that elapsed before the committal for trial is, in my opinion, attributable to inherent and institutional delays.

(iii) Reasons for the delay between the committal for trial and the trial date

[51] The time between the committal for trial (May 11, 2012) and the trial date (August 12, 2013) was 15 months.

[52] Mr. Latour filed a motion to exclude certain items of evidence. In *Morin*, the Supreme Court of Canada explained that although an accused is perfectly entitled to make this type of application, it is a factor that must be considered in determining whether the overall delay was reasonable: *R.* v. *Morin*, *supra*, pp. 793-94.

[53] In this case, however, there is nothing to suggest that the application to exclude evidence had any significant impact on the trial date. The hearing date for the motion to exclude evidence was set at the first pre-trial conference, in August 2012. The docket setting the date for the trial itself was issued a few weeks later, on September 17.

[54] As far as the trial date, it is clear that in scheduling it, the Court had to take its resources into account. But in fact, in this case, the limited availability of the parties would not have allowed the trial to be scheduled much sooner than it was.

[55] As I noted above, at paragraph 16, the first dates both parties were available were in June 2013. The next dates were in August, the month in which the trial was ultimately scheduled to proceed. Under the circumstances I find it necessary to make further observations regarding the information provided about the parties' availabilities.

[56] The parties' estimate was that this trial would take a full week. On September 4, 2012, the Crown notified the Court registry that it was completely unavailable before February 22, 2013. It was also unavailable from March 4 to May 10, 2013; from May 20 to June 7, 2013; and in July 2013. Therefore, for the first seven months of 2013, the Crown was available for a total of only five weeks (one week in February 2013, one week in May 2013 and three weeks in June 2013).

[57] Meanwhile, for the first 7 months of 2013, the Defence was available for a total of 16 weeks, that is, 3 weeks in January, 3 weeks in April, the entire month of May, the entire month of June and 2 weeks in July.

[58] The importance of information concerning the availability of the parties in the trial scheduling process, and the connection between this information and the institutional delay in the specific context of the Northwest Territories, has been noted by this Court in the past:

> Context is helpful in illustrating the link between the Crown's failure to submit dates and the institutional delay. This is a busy circuit court that hears criminal and civil cases in various communities throughout the Northwest Territories. Scheduling trials requires coordinating the schedules of judges, court and sheriff's officers, court reporters, interpreters (if required) and, of course, lawyers. Suitable facilities, which are frequently in short supply and often shared with the Territorial Court, must be booked, along with air travel and accommodation. The starting point for scheduling is knowing all of this information.
>
> *R.* v. *Latour*, 2012 NWTSC 4, at para. 65.

[59] These remarks not only underscore the importance of having the parties provide the Court with information concerning their availability, but also highlight in general terms the complexity of the trial scheduling process given the Court's limited resources and the impact that the parties' availability has on this process. Of course, the more limited the parties' availabilities are, the more difficult it will be to set a trial date.

[60] Of course, it is entirely understandable that parties have commitments that limit their availability. There are all sorts of factors that may have an impact on availability, particularly where witnesses are concerned. However, on a motion for stay of proceedings based on delay, where the Crown's availabilities for trial was very limited, as it was here, it would be prudent for the Crown to adduce evidence explaining why. There may be cases where the Crown's lack of availability,

especially if it is unexplained, could be a determining factor in the outcome of a motion like this one.

[61] Having said that, I find that in this case, the overall time between the committal for trial and the trial date was not greater than the norm, given the logistical constraints affecting institutional delays in the Northwest Territories.

(c) Prejudice

[62] The prejudice suffered by an accused as the result of a delay in his or her trial may be inferred from the delay itself. The longer the delay is, the more likely it is that such an inference will be drawn: *R.* v. *Morin*, *supra*, p. 801; *R.* v. *Godin*, *supra*, para. 31. The accused may also adduce specific evidence explaining the prejudice that he or she suffered: *R.* v. *Morin*, *supra*, p. 802.

[63] To be relevant for the purposes of the analysis, the alleged prejudice must arise from the delay and not from the mere fact that the accused has been charged: *R.* v. *Rahey*, [1987] 1 S.C.R. 588, p. 624; *R.* v. *Pidskalny*, 2013 SKCA 74, at para. 41.

[64] Mr. Latour states in his affidavit that he suffered prejudice for the following reasons: he spent time in pre-trial custody; he was required to comply with very strict conditions after his release, which conditions had a negative impact on his work plans and social life; he suffered from anxiety throughout the proceedings; the wait before his trial caused him health problems, such as depression and insomnia, for which he had to take medication; and his family life suffered because had no chance of gaining custody of his son until these proceedings were completed.

[65] At the motion hearing, the Crown argued that Mr. Latour's evidence regarding his anxiety, depression and insomnia was too vague to prove that these effects resulted from the delay and not from the mere fact that he has been charged.

[66] Any person facing serious criminal charges may experience anxiety. In fact, Mr. Latour states in his affidavit that he has been experiencing constant anxiety since the proceedings began.

[67] He states that his insomnia and depression were caused by the adjournments and the lengthy wait for his trial. There was no evidence contradicting this statement, and the Crown chose not to cross-examine him on his affidavit. That said, the evidence is not very detailed. I agree that these effects are in part attributable to how

long the proceedings took, but in my opinion, Mr. Latour has not established that they are entirely attributable to those delays. In my view, there can be no doubt that simply being charged with these very serious offences would have had a negative impact on him, quite apart from any delays in the proceedings.

[68] Mr. Latour was in pre-trial custody for approximately two thirds of the period between the laying of charges and the trial date. Once he was released on a recognizance, he had to comply with some rather strict release conditions. I acknowledge that these restrictions on his freedom caused him some prejudice. This prejudice is among the factors to be considered when deciding whether the delay was unreasonable in this case. However, he was not under house arrest, and he still enjoyed a degree of freedom in terms of his movements and activities.

3. Is the delay reasonable in this case?

[69] The final assessment of the reasonableness or unreasonableness of the delay depends on the evaluation of all the factors described above, that is, in this case, the causes of the delay and the prejudice suffered by the accused.

[70] For the reasons given above, I find that the Crown is responsible for part of the delay before the committal for trial. I also find that the very limited available dates that the Crown proposed to the Court for scheduling the trial date contributed to the delay. However, I conclude that the major part of the overall delay is the result of inherent and institutional delays.

[71] In the case law dealing with Paragraph 11(*b*), the Supreme Court of Canada, while acknowledging that there are limits to institutional resources, has clearly stated that these limits cannot be used as an excuse to justify an infringement of *Charter* rights. Thus, there is a limit as to what is acceptable as an institutional delay.

[72] The Supreme Court has issued guidelines to assist trial courts in determining what is an acceptable institutional delay. In *Askov*, it held that a delay of 6 to 8 months between committal to stand trial and trial "might be deemed to be the outside limit of what is reasonable": *R.* v. *Askov*, *supra*, p. 1240. In *Morin*, the Court confirmed this guideline and stated that an acceptable institutional delay for Provincial Court proceedings would be 8 to 10 months: *R.* v. *Morin*, *supra*, p. 799.

[73] But in *Morin*, the Supreme Court also clarified these guidelines in two important respects. First, they are not to be applied in a rigid manner or treated as a limitation period on criminal prosecutions: *R.* v. *Morin*, *supra*, p. 797.

[74] Second, these guidelines should not be applied mechanically. The Court emphasized the importance of considering the particular context of each jurisdiction:

> These suggested time periods are intended for the guidance of trial courts generally. These periods will no doubt require adjustment by trial courts in the various regions of the country to take into account local conditions and they will need to be adjusted from time to time to reflect changing circumstances. The court of appeal in each province will play a supervisory role in seeking to achieve uniformity subject to the necessity of taking into account the special conditions and problems of different regions in the province.
>
> *R.* v. *Morin*, *supra*, pp. 799-800.

[75] To my knowledge, the Court of Appeal for the Northwest Territories has yet to rule on this issue since *Morin* was decided. Until it does, it is up to the trial courts to determine what is an acceptable institutional delay, in the particular context of our jurisdiction.

[76] Without doubt, the context in which courts in the Canadian north operate is unusual, as this Court noted in the excerpt quoted above at paragraph 58. This unique context has been raised in other judgements of northern courts: *R.* v. *Caesar*, *supra*, paras. 22-24; *R.* v. *Oolamik*, 2012 NUCJ 28, paras. 99-106.

[77] As already mentioned in these Reasons, the Territorial Court and this Court are circuit courts. They sit every week in Yellowknife, but also in various communities spread across the vast expanses of the Northwest Territories. Because of the considerable distances between the communities and the limitations of the highway system, the Court usually travels to these communities by air. The frequency of the circuits to the various communities varies. In addition, unforeseeable factors, such as weather, can result in delays, and, sometimes, the cancellation of a circuit. All this contributes to institutional delays.

[78] This Court's circuits are scheduled, for the most part, to hold criminal trials. Where possible, this Court's practice is to hold trials in the community where the events giving rise to the charges are alleged to have taken place. This practice

applies to both trials by judge alone and trials by judge and jury. Hence, in the last seven years, the Court has held sittings in 17 communities other than the City of Yellowknife.

[79] In addition, in the Northwest Territories, many persons accused of serious crimes avail themselves of their right to be tried by a judge and jury. A large number of jury trials are scheduled each year in various communities in the territory. This is another factor that has an impact on judicial resources.

[80] These factors, and their cumulative effect, present special challenges and logistical constraints. The Court took note of this recently, in the context of a decision on a bail review where the accused had based his application for release, among other things, on the amount of time he would have to wait in custody before having his trial:

> The delay must be looked at in context. It must be understood that this court sits not only in Yellowknife every week to deal with civil, family and criminal matters, but it is also a circuit court that travels to the many communities across the Northwest Territories, which is a jurisdiction where a relatively small population is spread out over a large geographical area. The large majority of the circuits that this court holds are held for the purpose of holding criminal trials, and a very large proportion of those trials are jury trials. Circuits in general, and circuits where jury trials are held in particular, require a lot of planning and present logistical constraints and challenges. In scheduling these circuits the court has to contend with geography, a finite level of judicial resources, a small criminal bar whose members have a very heavy case load and many circuit and court commitments. In that context, it is simply not realistic for people to expect to have their jury trial within a matter of months from charges being laid. The court strives to give priority in assigning dates to matters where the accused are in custody or to matters that are getting more dated. Still, the reality is that it takes time for the various processes to take their course. People do have the right to choose to be tried by a court composed of a judge and a jury when they are charged with an indictable offence, but one of the consequences of that choice is having to wait longer before being able to have their trial.
>
> *R.* v. *Ruben* 2013 NWTSC 23, at para. 30.

[81] Given these constraints, the delay between the committal for trial and the scheduled date for a trial by judge and jury in the Northwest Territories will necessarily vary, depending on the community where the trial will be held, how much time is required for the trial, and the other logistical constraints that may arise. Generally speaking, given the special context in which the courts of the Northwest

Territories operate, I find that both the period preceding the committal for trial and the period following it may be somewhat longer than the *Morin* guidelines would allow, without being considered unreasonable.

[82] As I mentioned above, I acknowledge that Mr. Latour was in pre-trial custody for several months, and that even after being released on bail, he was required to comply with very restrictive conditions. I readily accept that these things had an impact on him and caused him some prejudice. However, as already noted, part of this prejudice is simply due to the fact that he was facing serious charges. The prejudice does not entirely stem from the time that passed before the case could be heard.

[83] When considering a motion brought under paragraph 11(*b*) of the *Charter*, a court must take into account all the factors laid down by the case law and carefully assess them to determine whether the accused's right to be tried within a reasonable time has been respected.

[84] In my view, most of the 22-month delay in the present case is attributable to inherent and institutional delays. Even though, for the reasons given above, I am of the opinion that the Crown is also responsible for part of the delay, in light of what may be reasonably expected in terms of inherent and institutional delays in the particular context of the Northwest Territories, and given the lack of evidence showing particularly severe prejudice, I conclude that Mr. Latour has not established that his rights under paragraph 11(*b*) of the *Charter* were infringed.

[85] The motion is dismissed.

Dated at Yellowknife, NT, this
12th day of December 2013.

"L.A. Charbonneau"
L.A. Charbonneau
J.S.C.

Counsel for Her Majesty the Queen: Marc Lecorre

Counsel for Hugues Latour: Serge Petitpas

Corrigendum

of

The Honourable Justice L.A. Charbonneau

1. On the cover page, the line that reads,

"Décision rendue oralement le 10 août 2013"

should read,

"Décision rendue oralement le 9 août 2013".

2. At paragraph 2, the line that reads,

"[2] Cette requête, entendue par le tribunal le 6 août 2013, a été rejetée le 10 août 2013"

should read,

"[2] Cette requête, entendue par le tribunal le 6 août 2013, a été rejetée le 9 août 2013".

3. At paragraph 9, the sentence that reads,

"[9] . . . Suite à cette première comparution, il y en a eu plusieurs autres en Cour Territoriale, soit le 14 octobre 2011, le 20 octobre 2011, le 6 décembre 2011, le 13 décembre 2011, le 25 janvier 2012, le 31 janvier 2012, le 6 février 2012, le 14 février 2012, le 13 mars 2012, le 20 mars 2012, le 27 mars 2012, et du 9 au 11 mai 2012"

should read,

"[9] . . . Suite à cette première comparution, il y en a eu plusieurs autres en Cour Territoriale, soit le 14 octobre 2011, le 20 octobre 2011, le 6 décembre 2011, le 13 décembre 2011, le 25 janvier 2012, le 31 janvier 2012, le 14 février 2012, le 13 mars 2012, le 20 mars 2012, le 27 mars 2012, et du 9 au 11 mai 2012".

4. The citation on the cover page and on page 1 has been amended and now reads as follows:

"*R. c. Latour,* 2013 CSTNO 95.cor 1".

S-0001-CR 2012000063

SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

HUGUES LATOUR

Corrected judgment: A corrigendum was issued on December 18, 2013; the corrections have been made to the text, and the corrigendum is appended to this judgment.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE L.A. CHARBONNEAU

This document is an unofficial English translation of the Reasons of Judgment of the Honourable Justice L.A. Charbonneau dated December 12, 2013. This document is placed on the Court file for information only.