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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

CHARLIE NIGAKTALIK



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Transcript of Judgment delivered by His Honour Judge  
R. M. Bourassa, sitting in Yellowknife, in the  
Northwest Territories, on Wednesday, February 15,  
A.D. 1984.

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APPEARANCES:

MR. G. BICKERT                      On behalf of the Crown  
MS G. LANG                            On behalf of the Defence

1 THE COURT:

2 I should say at the outset that I take this  
3 application very seriously, and I've spent some time in  
4 reviewing all of the case material supplied by Counsel as  
5 well as some other case materials I am familiar with. I  
6 would take the position at the outset that this Court has  
7 the jurisdiction to entertain applications for a stay of  
8 proceedings based on the abuse of its own process. I think  
9 that apart from what has been stated in other jurisdictions  
10 that position finds support in the decisions of Mr. Justice  
11 de Weerd in R. v. Chabun, as well as R. v. Panarctic. I  
12 believe the matter then is properly before me, and I have  
13 the power to grant the relief requested.

14 I am in sympathy with respect to the applica-  
15 tion. I think the problem raised in the application is  
16 serious, and perhaps compounded--more than it would be in  
17 a southern jurisdiction, because of the Northwest Territories'  
18 peculiar situation. Here we can have a Defendant in a re-  
19 mote community interviewed by a defence counsel who is more  
20 than likely duty counsel or legal aid. Based on the election  
21 of the Crown, the duty counsel will describe the parameters  
22 of sentencing, will interview the man or defendant about the  
23 offence and make a decision as to plea. Then, two or three  
24 months will transpire, the defendant will be at home--I'm  
25 assuming, for the purposes of this scenario--mulling over and  
26 worrying or considering what has been laid out to him by  
27 counsel. Two or three months later, a new counsel arrives  
in the community,

1 and if that new counsel has done his homework as is usually  
2 done, that counsel will meet with the defendant, probably  
3 review the facts again if a trial has been set, proceed to  
4 trial. If the Crown changes its election, and I use that  
5 word in describing the staying of one Information and the  
6 laying of a new Information, then the accused is confronted  
7 with another brand-new situation. He now has a different  
8 lawyer telling him a different story, and it may well be  
9 that the niceties of staying and laying of new informations  
10 and Crown elections are lost on the defendant, and the whole  
11 process becomes incomprehensible to the accused.

12 Now, I think it is clear from what Mr. Justice  
13 de Weerdts has said as well as in virtually all of the case  
14 authorities given to me for this Court to find abuse of pro-  
15 cess, there has to be some pretty strenuous or pretty sig-  
16 nificant matters before the Court in terms of oppression,  
17 oblique motive, and serious prejudice to the defendant.  
18 Delay, procedural complications, are not a ground for finding  
19 an abuse of process.

20 I find that the procedure by the Crown can,  
21 and in this case did, certainly cause confusion for the  
22 applicant. It makes it very difficult for  
23 the applicant to understand what is going on. It causes  
24 problems in the administration of justice in that a matter  
25 may be set for trial on the second circuit, and when counsel  
26 is faced with a new election by the Crown to proceed by way  
27 of indictment, may want a further adjournment to consider

1 the situation or the client's situation, it may result in  
2 delays, expense, inconvenience, but I very reluctantly come  
3 to the conclusion that it does not, as I understand the  
4 the law, amount to an abuse of process; nor, in my view,  
5 does it amount to an abuse or contrary to Section 7 of the  
6 Charter of Rights.

7 I must, therefore, with reluctance--and as I  
8 say, I am in some sympathy with the applicant--dismiss the  
9 application.

10 I would raise one query. The procedure by the  
11 Crown with respect to this individual, as I have indicated,  
12 I find is not an abuse of process as understood by our  
13 law at this point. One wonders if the use of Section 506,  
14 the staying and laying of new Informations on a regular  
15 continuing basis in itself would amount to an abuse of  
16 process of the whole system. It is not stated in any of  
17 the cases that I have referred to exactly what Section 506  
18 is designed to cover, but to use it on a regular and con-  
19 tinuing basis, to correct misjudgments or correct errors by  
20 one Crown or to combine four or five Informations into one,  
21 could very well invite the that that in it-  
22 self is an abuse of process. I think notwithstanding the  
23 dismissal of this application, the Court has to remain ready  
24 to consider other applications in the  
25 future, should the continued use of or the circumventing  
26 of normal procedure reach such a point where it constitutes  
27 an abuse of the whole process. I think it is an interesting

1 issue; and I don't have any evidence, of course, before  
2 me that this is being done, but it may be something that the  
3 Court may have to consider in the future.

4 I thank Counsel for their work on this matter.  
5 I take it then on that basis we will be proceeding to trial  
6 on the twenty-second, is it?

7 MR. BICKERT: It is scheduled for the twentieth of February,  
8 and I've indicated the Crown's willingness to proceed on  
9 that date should counsel for the accused wish to proceed.

10 MS LANG: My understanding is it will be, yes.

11 THE COURT: That will be for trial.

12 MR. BICKERT: Mr. Nigaktalik is a serving prisoner, so perhaps  
13 a remand warrant to that date could be prepared.

14 THE COURT: He will be remanded in custody to that date.

15 MR. BICKERT: Thank you.

16 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)  
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18 Certified a correct transcript

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20 Edna Thiessen, Court Reporter  
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