

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**CHRISTOPHER JOHN ABEL**

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**REASONS FOR DECISION OF THE  
HONOURABLE JUDGE ROBERT D. GORIN**

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Application for Adjournment

Heard at: Yellowknife, Northwest Territories  
August 6, 2009

Reasons Filed: August 7, 2009

Counsel for the Accused: D. Rideout

Counsel for the Crown: M. Nassar

[Charged under ss. 348(1)(b), 351(1), 733.1(1), 354(1) of the *Criminal Code*]

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**IN THE MATTER OF:**

HER MAJESTY THE QUEEN

-v-

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[1] I thank both counsel for their submissions.

[2] The Crown applies for an adjournment of a preliminary inquiry set to this morning at 9:30 a.m. The adjournment application comes at the same time as that which was set for the preliminary inquiry's commencement. Counsel for the accused, Mr. Rideout, opposes the Crown's application.

[3] I deny the request for an adjournment for the following reasons.

**Analysis**

[4] The determination of whether or not to grant a request for an adjournment is discretionary on the part of the judge who hears the application. As is the case with all such matters, the discretion must be exercised in a judicial manner.

[5] In the case of *Darville v. The Queen* [1956] CCC 113, 25 CR 1 [S.C.C.], the Supreme Court of Canada set out the criteria which the court should consider when considering whether or not to grant a request for an adjournment. Those criteria are:

(a) that the absent witnesses are material witnesses in the case;

(b) that the party applying has been guilty of no laches or neglect in omitting to endeavour to procure the attendance of these witnesses;

(c) that there is a reasonable expectation that the witnesses can be procured at the future time to which it is sought to put off the trial.

[6] Counsel are in agreement that the 1<sup>st</sup> and 3<sup>rd</sup> criteria have been satisfied in the present case. Based on the evidence and submissions I have heard, I agree.

[7] The issue in the present case is whether the Crown, as Applicant, has demonstrated that it is guilty of no laches or neglect in omitting to endeavor to procure the attendance of two of the three witnesses it wishes to call at the preliminary inquiry.

[8] On June 19<sup>th</sup>, this matter was set down for preliminary inquiry to today's date, August 6<sup>th</sup>. Half a day of court time was allocated for the preliminary inquiry. Constable Long testified on the Crown's application. He stated that at some point he received correspondence from the crown, which asked him to serve subpoenas on three witnesses: T.N.; K.S. and D.W.

[9] He was able to subpoena D.W. However, T.N. and K.S., who are spouses, were outside of the jurisdiction in Vancouver. Constable Long said that because the subpoenas for them which he received were unsigned, he had to contact the Crown's office in order to have signed subpoenas sent to him.

[10] He did not testify when he first received the subpoenas. However, he did testify that these subpoenas had a stamp on them indicating that they were received on July 13<sup>th</sup>, over three weeks after the preliminary inquiry was set.

[11] He testified that he received the "signed" subpoenas for T.N. and K.S. on July 28<sup>th</sup>. For the purposes of analysis I will assume that he means properly issues *ex-juris* subpoenas when he uses the term "signed". The Crown did not provide me with the subpoenas or certified copies of them in support of its application.

[12] On, July 28<sup>th</sup>, the same day he received the subpoenas, Constable Long phoned T.N. in Vancouver and told him of the August 6<sup>th</sup> court date in Yellowknife. T.N. advised that he and his wife were professional musicians and that if they were required to come to Yellowknife on August 6<sup>th</sup>, they would lose a lot of money and that many other people would be put out of work.

[13] T.N. advised that the two would be back in Yellowknife on September 1<sup>st</sup> for a three week period.

[14] I heard no evidence that the subpoenas were served. I heard no evidence on any attempts to serve the subpoenas. Furthermore, the matter was not brought forward by the Crown to apply for the adjournment prior to today's date.

[15] I find that the Crown has not demonstrated that it is not guilty of laches or neglect in its attempts to procure the attendance of the witnesses T.N. and K.S. The first subpoenas were received by Constable Long more than three weeks after the date on which the preliminary inquiry was set. The subpoenas in question were not signed. Properly issued *ex-juris* subpoenas were not provided to Constable Long until over two weeks later on July 28<sup>th</sup>. Constable Long contacted T.N. who advised that attending Yellowknife on the date set for preliminary inquiry would pose financial hardship to both himself and K.S. along with many other people. However, as stated, for some reason I have heard no evidence on whether or not the subpoena's were served. I have heard no evidence of any attempts to serve the subpoenas or any difficulty in that regard.

[16] Ms. Nassar on behalf of the Crown, submits that given the short time span between the time that Constable Long received the subpoena and the time that he found out the witnesses were out of the jurisdiction, and the time that an *ex juris* subpoena was issued, there was insufficient time to serve the witnesses.

[17] Unfortunately, Ms. Nassar's submissions refer to factual matters which were not present in the evidence placed before me. Constable Long did not testify that he only found out that the witnesses were in Vancouver, after he received the first set of subpoenas. He said:

"I originally received the subpoenas for the witnesses. Unfortunately for T.N. and K.S. they were in Vancouver and the first subpoenas that I received were not signed so I could not issue them to them and I had to contact the Crown's office and have signed subpoenas returned to me and once I did that was on the 20<sup>th</sup> of July, I contacted (T.N.) to inform him of the subpoenas."

[18] In his testimony, Constable Long later clarified that it was on July 28<sup>th</sup> that he received the second batch of subpoenas. However, nowhere in his testimony did he say that he only found out that the witnesses were out of the jurisdiction after receiving the first batch of subpoenas. Nowhere in his testimony did he say that the first subpoenas he received for T.N. and K.S. were not *ex-juris* subpoenas; he simply said that they were unsigned. Nowhere in his testimony did he say that when he received the signed subpoenas for T.N. and K.S. there was insufficient time to serve them.

## **Conclusion**

[19] It is for the foregoing reasons that I find the 2<sup>nd</sup> requirement set out in *Darville* has not been fulfilled. Therefore as stated, the application for an adjournment is denied.

[20] I will add that regardless of whether or not the subpoenas were served, or could have been served, the matter could and should have been brought forward prior to the preliminary inquiry date to make the adjournment application. The Crown has advised that this step was not taken because it only learned of the problem yesterday. While, I certainly do not fault Ms. Nassar personally, the lack of communication is unfortunate.

Robert D. Gorin  
J.T.C.

Dated at Yellowknife, Northwest Territories,  
this 6<sup>th</sup> day of August, 2009.

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