

Case Name:  
**R. v. Vanderspoel**

**Between**  
**Her Majesty the Queen, and**  
**Trent Ryan Vanderspoel, Accused**

[2015] A.J. No. 659

Action No.: 140711961P1

E-File No.: RCP15VANDERSPOELT

Alberta Provincial Court

**B.R. Garriock Prov. Ct. J.**

March 5, 2015.

(9 paras.)

*Criminal law -- Constitutional issues -- Canadian Charter of Rights and Freedoms -- Legal rights -- Procedural rights -- Delay -- Trial within a reasonable time -- Remedies for denial of rights -- Specific remedies -- Stay of proceedings -- Application by accused for stay of proceedings based on delay allowed -- Incident occurred in March 2014 -- Promise to appear was issued in June 2014 -- Trial was originally set for December 2014 -- Charter and Askov applications were heard in September 2014 -- New trial date of March 2015 was set -- One-year delay from date of issuance of promise to appear to trial date warranted inquiry -- Two month delay caused by police contravening section 505 of Criminal Code by not swearing Information made 12-month delay unreasonable -- Canadian Charter of Rights and Freedoms, 1982, s. 24(1).*

**Statutes, Regulations and Rules Cited:**

Canadian Charter of Rights and Freedoms, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 24(1)

Criminal Code, R.S.C. 1985, c. C-46, s. 505

**Counsel:**

S.C. Pittman, for the Crown.

R. Ziv, for the Accused.

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### Ruling

**1** B.R. GARRIOCK PROV. CT. J.:-- This matter of Vanderspoel is back before me due to the fact that the trial date was adjourned from December 10th, 2014 to March 5th, today's date. This occurred because when I heard the first Askov, [1990] 2 S.C.R. 1199 application on September 25th, 2014, I became seized with the trial matter. Unfortunately, I was not scheduled to sit on December 10th, 2014, the trial date that was set, I was at a conflict in another matter scheduled there at that same date. In other words, I was part of the institutional delay referred to in *Morin*, [1992] 1 S.C.R. 771.

**2** Other avenues were suggested such as moving this matter to Westlock where I was scheduled to sit on that date of December 10, 2014; however, nothing was available on the other dates suggested by Mr. Ziv due to such dates either already being full for the day, not being sitting days in Morinville, or the Crown's witnesses not being available. This resulted in a new trial date being set to today, March 5th, 2015 here in Morinville, almost a year to the day of the date of the incident on March 9th, 2014.

**3** By way of context therefore the operative dates are as follows. March 9th, 2014, the date of the incident and when the promise to appear issued for appearance on June 12, 2014. June 12, 2014, the accused appeared in court but was not listed on the docket as no Information was sworn, contrary to section 505 of the *Criminal Code*. On June 25th, 2014, an Information was sworn and a summons was issued to the accused for a court appearance on August 7th, 2014. On August 7, 2014, the matter was adjourned until August 21st, 2014 by duty counsel. On August 21st, 2014, the original December 10th, 2014 trial date was set as well as a September 25th, 2014 date established for the initial *Charter* application. On that date of September 25th, 2014, the *Askov* application was heard by me and denied. Further court appearances thereafter occurred on October 1st, October 9th and October 16th when the trial date today was set.

**4** I refer to and adopt the comments of my sister Judge Johnson in *R. v. Chartier* where she dealt with an *Askov* application matter also in the context of a section 505 contravention by the Crown and these are paragraphs 94 to 104 of that decision, and I quote:

"Section 11(b) of the *Charter* ensures the right of a person charged with an offence to be tried within a reasonable period of time.

The primary purpose of section 11(b) is the protection of the individual rights of accused. Those rights are (1) the right to security of the person, (2) the right to liberty, and (3) the right to a fair trial.

Society has secondary interests which are parallel and adverse to the interests of an accused.

Society as a whole has an interest in seeing that the least fortunate of its citizens who are accused of crimes are treated humanely and fairly. In this respect, trials held promptly enjoy the confidence of the public.

However, there is collective interest in ensuring that those who transgress the law are brought to trial and dealt with according to the law. As the seriousness of the offence increases, so does the societal demand that the accused be brought to trial.

An application under section 11(b) requires the Court to balance the interests of the accused and those of society. It is not a mathematical exercise. Some delay is inevitable. The question is when it becomes unreasonable.

In *Morin* our Supreme Court identified the factors which a Court must consider in addressing the reasons for delay, including: length of the delay, waiver of time periods by the accused, reasons for the delay, including inherent time requirements of the case, actions of the accused, actions of the Crown, limits on institutional resources, and other reasons for delay and prejudice to the accused.

An inquiry into unreasonable delay is triggered by an application under section 11(b). In *Morin* the Court indicated that an inquiry

.. .should only be undertaken if the period is of sufficient length to raise an issue as to its reasonableness. If the length of the delay is unexceptional, no inquiry is warranted and no explanation for the delay is called for unless the applicant is able to raise other factors such as prejudice.

What is the length of and reasons for the delay in this case?"

5 And that again was Judge Johnson referring to her matter. She said:

"The trial of the accused is scheduled to be heard more than a year after

he was first required to appear in answer to his alleged offence, and more than 13 months after the alleged offence itself. An inquiry as to the reasons for such a delay is warranted.

The Court is required to examine the period from the charge to the end of the trial. Generally, a person is "charged" when the Information is sworn, however, this will not invariably be the case, particularly when there has been non-compliance with section 505 of the *Code*."

**6** And she points to the *Goreski* decision. In *Goreski* she stated:

"The Court found that under those circumstances the issuance of the promise to appear provided the appropriate starting point from which to consider delay under section 11(b)."

**7** Now, unlike the previous time when I heard this application where I felt that the nine month period from the date of the initial promise to appear to the trial date was not sufficient to raise an issue as to reasonableness, I do find that a one year delay from the date of that issuance of the promise to appear to the trial date in this jurisdiction warrants an inquiry as to the reasons therefore, as Judge Johnson said in *Chartier*, and I also follow *Goreski* to calculate the period from the date of the initial promise to appear which was the offence date as there was non-compliance with section 505 of the *Criminal Code*.

**8** The time between when the original trial date was set, and that date was August 21st, 2014, and the adjourned trial date of March 5th, 2015, is six and a half months and therefore within the *Morin* guidelines of 8 to 10 months for such institutional delay, i.e. when the parties indicate that they are ready for trial and when the Court can accommodate the trial. The time between the promise to appear date of March 9th, 2014 and the first appearance date of June 12th, 2014 is not unreasonable. However, the period between the first court appearance of June 12th, 2014 and when the accused was compelled to be in court via the summons to answer what was then the sworn Information on August 7th, 2014 extended the whole process by approximately two months, i.e. June 12, 2014 to August 7th, 2014. While such two month period in and of itself in the whole scheme of the criminal process is unremarkable, I must bear in mind the following context of the 12 month period we are talking about now and that is the period from the date of the initial promise to appear to the date of the trial being one year is not reasonable.

**9** The reason for the two months of this delay resulted from the police contravening section 505 of the *Criminal Code*, during this period the accused suffering prejudice for such a prolonged period of time, and that dealt with reduction of his work hours which we heard in the previous application, the probable loss of an impending job promotion to a management position -- we heard nothing further about that today -- a fruitless trip to court on June 12, 2014 when he did not have a license to drive, and having these charges hanging over him for a one year period. As such, in total I feel that such delay of 12 months is unreasonable. As Judge Johnson stated in the *Chartier* matter, the Court recognizes the societal interest in having matters brought to trial. That interest is balanced

against society's interest in maintaining confidence in the administration of justice. As in that case I find that the balance has been tipped in favour of the accused in the case at bar. Accordingly, the Court directs a stay under section 24(1) of *Charter*.