COURT FILE No.: TORONTO 10020557-1/2008

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

CHRISTOPHER RAMSAROOP AND ORIEL VARGA

Before Justice Paul H. Reinhardt
Heard on 5 August 2009
Reasons for Judgment released on 10 September 2009

Joanne Bruno ..... for the Crown
Michael A. Leitold ..... for the accused Christopher Ramsaroop
Selwyn A. Pieters …….....for the accused Oriel Varga

REINHARDT J.:

[1] The applicants, Christopher Ramsaroop and Oriel Varga, stand charged with a series of offences arising out of events on 20 March 2008 at the University of Toronto, during which they participated in a student "sit-in" at Simcoe Hall at the University of Toronto to object to proposed student fee increases. They were charged with five counts of forcible confinement, one count of forcible detainer and one count of mischief. There were originally multiple information's and fourteen accused. Most of the accused persons entered into peace bonds and had their charges withdrawn. Two were disposed of on the basis of no reasonable prospect of conviction. At least one person had their charges withdrawn for other reasons. One accused, Mr. Ali, had his charges stayed. The applicants are the only two accused still before the courts. A five day trial has been scheduled for them in this courthouse commencing 28 September 2009.

[2] This is an application for a stay of these proceedings on the grounds that the over 17 month time-period between their arrest and the scheduled trial date has been a breach of their *Charter* right to a trial within a reasonable time. The Crown replies that this case was complex, involving fourteen co-accused, six civilian witnesses and more than ten police witnesses, most of who were University of Toronto police. Thus, it is argued, the inherent time requirements of the case are far greater than the usual case. Therefore, the time period to trial is reasonable. Finally, the Crown argues that there has been no actual prejudice to the ac-

cused.

1: The Facts

[3] On 20 March 2008 the applicants attended with approximately forty other students at a 'sit-in' in Simcoe Hall at the University of Toronto to protest hikes to student fees.

[4] On 21 April 2008, Constable Larry Mikalachki of the Toronto Police sent out an e-mail to the applicants, along with eleven or more other students, advising them to contact 52 Division because they were "implicated in a criminal offence or offences which occurred at U of T."

[5] On 25April 2008, over one month after the "sit-in" the applicants presented themselves at 52 Division and were arrested.

[6] Mr. Ramsaroop was released on a Form 11.1 undertaking to an officer-in-charge with conditions that he not communicate with the other accused students and that he not attend the University of Toronto campus except for the purposes of attending classes.

[7] Ms. Varga was held for a show cause hearing on Saturday, 26 April 2008 at the College Park courthouse in Toronto, and released on consent on a $1000 surety recognizance naming her father as her surety and with similar conditions, that she not communicate with the other accused students, except for the purposes of attending classes. However, she was also permitted to communicate with the other students for purposes of employment with the student's association.

[8] When the Applicants first appeared in set date court on these charges on 3 June 2008, only very modest initial disclosure was available, comprising the synopsis, witness list, record of arrest and a charge screening form for each accused. The matter was adjourned to 3 July 2008 at the request of the Crown to allow for further disclosure.

[9] On 3 July 2008, disclosure was not available in court, but the Crown indicated that some preliminary disclosure might be available in the Crown's office.

[10] In the interim between court dates, Mr. Leitold, counsel for the applicant Christopher Ramsaroop picked up additional disclosure from the Crown's office, reviewed same and particularized a list of a large amount of outstanding disclosure in a letter faxed to the Crown on 10 July 2008.

[11] Other defence counsel asserted in correspondence to the Crown that they required the materials referenced in the 10 July 2008, letter to the Crown.

[12] On 17 July 2008, the matter returned to 111 court, where the Crown asserted that initial and further disclosure had been left at the Crown's office for pickup to this point, and additional disclosure was provided in the form of a DVD containing a "You-Tube" video purporting to capture the alleged events.

[13] Also on 17 July 2008, the assigned Crown indicated that as she had been on vacation for a month, and a senior Crown had been looking into the matter, the Crown had not yet received defence counsel's request for outstanding disclosure, and the Crown was not yet in a position to conduct a crown pre-trial conference, and the matter was remanded to 21 August 2009, for the outstanding disclosure to be provided.

[14] After reviewing the disclosure material provided to this point, Mr. Leitold, for Mr. Ramsaroop, faxed another letter requesting outstanding disclosure to the Crown on 14 August 2008. Mr. Pieters for Mr. Varga later faxed a disclosure letter particularizing other additional materials that remained outstanding on 21 August 2008.

[15] On 21 August 2008, the matter returned to 111 court, and further disclosure was provided to counsel, but the Crown indicated they had not received the 4 August 2008 letter from defence counsel, though counsel later attended court with copy of the letter and a fax confirmation sheet confirming that the fax had been received by the Crown's office.

[16] The Crown indicated that they were still not in a position to conduct a Crown pre-trial conference as of 21 August 2008.

[17] On 4 September 2008, when the matter returned to court in 111 court, no additional disclosure requested by counsel in the letters of 4 August and 10 July was provided, and the Crown indicated that they were not yet able to have a crown pre-trial conference, and were still in the process of determining if the matter could be resolved first before disclosure was provided, since "requesting disclosure from the various parties involved often hinders the possibility of resolution".

[18] On 4 September 2008, the Crown indicated on the record that in the absence of waiver of the accused person's rights under section 11(b) of the Charter by counsel, resolution discussions would cease on the next date.

[19] Counsel refused to waive any 11(b) rights of the accused on 4 September 2008, or on any preceding or future date in this matter.

[20] On 25 September 2008, when the matter next returned, the Crown placed a joint information charging the applicants before the court and other students with identical counts, and the same bail was deemed to apply, and each separate information naming each accused separately were each withdrawn.

[21] According to a review of the transcripts, some counsel had not heard back from the assigned Crown regarding certain aspects of the proposed resolution in the matter, as the assigned Crown was at a Crown conference, but defence counsel had received a letter from the case management Crown on 24 September 2008 indicating that a number of items of disclosure would be forthcoming.

[22] On 16 October 2008, when the case returned to court, some outstanding disclosure in the form of the notes of two more involved officers were received, and the matter was remanded to 6 November 2008.

[23] On 20 November 2008 the Crown asserted that all the outstanding disclosure had been provided, as the officer-in-charge, Mike Leone, had taken no notes. The Crown also confirmed that the matter would require a judicial pre-trial conference and that diversion was being actively pursued for all of the parties, save one, Mr. Hay-Layefsky, where the Crown was considering a withdrawal, based upon no reasonable prospect of conviction.

[24] The matter was adjourned on 20 November 2008 for a judicial pre-trial conference on 12 December 2008, and then remanded for a continuing judicial pre-trial conference with Justice Bentley on 30 January 2008.

[25] On 30 January 2008 the matter was set down for a five-day trial commencing on 28 September 2009.

[26] In the affidavit of Natalee Bourse, law clerk in the firm of Roach, Schwartz & Associates, representing Mr. Ramsaroop, sworn 20 July 2009, paragraph twenty-five, Ms. Bourse deposes that for the eleven named defendants initially represented by her office all the disclosure provided to each accused person had been identical and that for all of these defendants, with the exception of Mr. Ramsaroop, the charges had been withdrawn.

2: The Legal Framework

[27] The onus is on the applicants to establish, on a balance of probabilities, that there has been a *Charter* breach.

[28] In ***R. v. Morin***, [1992] S.C.J. No. 25, Justice John Sopinka sets out the factors that must be considered in determining whether there has been an unreasonable delay, under Section 11(b) of the *Charter,* starting at paragraph 31:

> **The Approach to Unreasonable Delay -- The Factors**
>
> 31 The general approach to a determination as to whether the right has been denied is not by the application of a mathematical or administrative formula but rather by a judicial determination balancing the interests which the section is designed to protect against factors which either inevitably lead to delay or are otherwise the cause of delay. As I noted in ***Smith***, supra, "[i]t is axiomatic that some delay is inevitable. The question is, at what point does the delay become unreasonable?" (p. 1131). While the Court has at times indicated otherwise, it is now accepted that the factors to be considered in analyzing how long is too long may be listed as follows:
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> 1. the length of the delay;
> 2. waiver of time periods;
> 3. the reasons for the delay, including
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> (a) inherent time requirements of the case,
>
> (b) actions of the accused,
>
> (c) actions of the Crown,
>
> (d) limits on institutional resources, and
>
> (e) other reasons for delay; and

> 4. prejudice to the accused.
>
> These factors are substantially the same as those discussed by this Court in ***Smith***, supra, at p. 1131, and in ***Askov***, supra, at pp. 1231-32.
>
> 32 The judicial process referred to as "balancing" requires an examination of the length of the delay and its evaluation in light of the other factors. A judicial determination is then made as to whether the period of delay is unreasonable. In coming to this conclusion, account must be taken of the interests which s. 11(b) is designed to protect. Leaving aside the question of delay on appeal, the period to be scrutinized is the time elapsed from the date of the charge to the end of the trial. See ***R. v. Kalanj***, [1989] 1 S.C.R. 1594. The length of this period may be shortened by subtracting periods of delay that have been waived. It must then be determined whether this period is unreasonable having regard to the interests s. 11(b) seeks to protect, the explanation for the delay and the prejudice to the accused.

[29] Justice Sopinka then summarizes, at paragraph 35:

> 35 As I have indicated, this factor requires the court to examine the period from the charge to the end of the trial. Charge means the date on which an information is sworn or an indictment is preferred (see ***Kalanj***, supra, at p. 1607). Pre-charge delay may in certain circumstances have an influence on the overall determination as to whether post-charge delay is unreasonable but of itself it is not counted in determining the length of the delay.

[30] In ***Morin,*** supra, Justice Sopinka suggests that a period of eight to ten months for institutional delay in the provincial courts is generally a reasonable period, for cases that are not unusually complex. However, he also states that no mathematical formula exists to determine if the right to trial within reasonable time has been infringed. Instead, the above factors must be considered and weighed together. In addition, his and following judgments require that the court consider the inherent time requirements for any particular case. For example, a long and complex fraud case will require far more intake time than a simple assault case. (***R. v. Morin*** (supra), ***R. v. Allen***, 110 C.C.C. (3d) 331 (Ont. C.A.) Affd. 119 C.C.C. (3d) 1 (S.C.C.), ***R. v. Godin,*** [2009] S.C.J. No. 26 (S.C.C.).

3: Analysis

[31] It is conceded by the respondent that the length of the delay, seventeen months, is sufficient to warrant and inquiry by this court.

[32] I find that there has been no waiver of time periods by the applicants.

[33] The parties join issue on the inherent time requirements of this case. The applicants assert that the intake period, or inherent time period of this case extends from the date of arrest, 25 April 2008, to 3 June 2008 when the applicants first appeared in set date court on the charges, a period of one and one-quarter months. The respondent submits that this case was complex, involving initially fourteen accused, six civilian witnesses and ten police officers. The respondent further argues that the intake period and the inherent time requirements in this case should include time to respond to the defence's disclosure requests, time for the Toronto Crown Attorney to consult with the parties involved to facilitate resolution, the time

that the defence took to consider Crown proposals for resolution, Crown pre-trials and judicial pre-trials, a period to 20 November 2008 of approximately six and one-half months.

[34] I have concluded that the Crown argument on this point must fail. In reviewing the application record, I have concluded that the various factors raised by the respondent cannot justify considering the ongoing disclosure requests, resolution discussions and pre-trials as part of the "inherent" time requirements of the case. Nor can the Crown succeed in arguing that this matter was so complex as to require a different calculation than would normally be done with respect to the "inherent" time requirements.

[35] In his discussion of complexity in the context of "inherent" time requirements in ***Morin***, Justice Sopinka points to fraud cases which require the analysis of many documents or conspiracies with numerous wiretaps and intercepted communications. He also refers to cases that include preliminary inquiries as part of the time period leading up to trial. These considerations do not apply to this case. Although their were a number of accused, multiple witness statements, and a "You Tube" video on the internet after the initial disclosure process began, this case did not have forensic complexity as found in the examples given by Justice Sopinka. I agree with the applicants that the bulk of disclosure could have been ready, and a trial date set when the matter came before court on 3 June 2008. (For the rationale of setting a trial date before all the disclosure is complete, see ***R. v. Kovacs-Tatar,*** [2004] O.J. No. 4756)

[36] It was close to a month after the "sit-in" that the information was laid and the matter proceeded. In this time period, the Crown had the opportunity to review the evidence, and reach conclusions as to who should be proceeded against. This was the appropriate time to thoroughly collate and prepare the materials that would then form the basis of disclosure for the students who were eventually charged and brought before the court on 3 June 2008. The particular facts of this case were that the Crown had more opportunity than in the regular course to prepare disclosure for the accused in advance of the first day in court.

[37] There are actually over eighteen months from the date of the alleged offences and the proposed trial date. In my view, this that exceptional case where the prosecution's conduct in the pre-charge-period has had a definite influence on my overall determination as to whether post-charge delay in bringing the matter to trial is unreasonable. (See Sopinka in ***Morin***, supra, at paragraph thirty-five.)

[38] With regard to the Crown's argument regarding Crown pre-trials, judicial pre-trials, disclosure and resolution discussions, as part of the "inherent" time requirements in this case, these are essential parts of every case, but they should not be construed as "inherent" time requirements, beyond the initial intake periods which bring the accused initially before the court, unless complexity justifies it.

[39] In this case, the disclosure was incomplete for at least five and one-half months, despite the Crown having a significant period to prepare it, and receiving a number of letters from counsel detailing the outstanding disclosure requested. Disclosure was not complete when the judicial pre-trial conference was set, nor when the trial date was set. Disclosure of

the items particularized in the Crown's letter of 24 September 2008 is still not complete.

[40] The disclosure material provided by the Crown to each defendant was virtually identical. In my view, initial disclosure, sufficient to set a date for trial, should have been ready by 3 June 2008 when the accused first appeared in court, two and one-half months after the events of 20 March 2008, and one and one-quarter months after the accused were arrested.

[41] I accept the principle, as argued by the defence, that when the Crown has failed to meet its disclosure obligations or caused delay to the defence in obtaining materials necessary for the defence to evaluate the case, this court should not permit that delay to be treated as "inherent" or neutral, in the determination of whether there has been a breach of 11(b). (See ***R. v. McNeilly***, [2005] O.J. No. 1438 (S.C.J.), ***R. v. Yun***, [2005] O.J. No. 1584 (S.C.J.))

[42] I further accept the principle as stated in ***R. v. Kovacs-Tatar*** [2004] O.J. No. 4756**,** in the Ontario Court of Appeal, at paragraph forty-seven, that disclosure does not have to be complete before a trial date can be set.

> 47 Something should be said about counsel's refusal to set a date because the expert report was not available. The Crown is obliged to make initial disclosure before the accused is called upon to plead or to elect the mode of his trial. See the comments of Sopinka J. in ***R. v. Stinchcombe*** (1991), 68 C.C.C. (3d) 1 (S.C.C.) at pp. 13-14. In this case, since the Crown had elected to proceed summarily, election of the mode of trial was not an issue. Having regard to the length of time before trial, the appellant's counsel knew the expert's report would be completed many months before the appellant had to plead and the appellant would have had ample time to obtain his own expert's report had he wished to do so. Also, because the obligation of the Crown to make disclosure is a continuing one, the Crown is not obliged to disclose every last bit of evidence before a trial date is set. The defence was not forfeiting its "***Stinchcombe*** rights" by agreeing to set a trial date. Counsel for the appellant did not act reasonably in insisting that he receive the expert report before setting a trial date.

[43] In this courthouse, the Crown pre-trials and judicial pre-trials are scheduled by Crown and court administrators, and are subject to the availability of institutional resources. defence counsel have no control over those factors.

[44] We conduct many Crown pre-trials, judicial pre-trials and case management meetings every day, and these form a part of the process in almost every case where the trial is estimated to take more than one day. In these meetings we discuss disclosure, possible pleas and the narrowing of trial issues. Always we have an eye on the possibility of resolution. Resolution proposals are made, rejected, revised and renewed. Even as the trial date approaches, we establish readiness dates and encourage the parties to review the possibility of resolution.

[45] In my view, ongoing discussions of this type regularly take place after a trial date is set and cannot appropriately be recast as "inherent" time requirements. I take some comfort in this view in the reasoning of my colleague, Justice Robert Spence, in his decision in ***R. v. Shah*** [2004] O.J. 4529, at paragraph 19, in which he concludes that the time needed for judi-

cial pre-trials should be characterized as a limit on institutional resources and not an "inherent" time requirement.

[46] The Crown factum asks me to conclude that based on a conclusion that the "inherent" time period in this case should extend to at least 20 November 2008, and that the period following that, to 12 December, and then 30 January 2009 needed to schedule and hold the judicial pre-trials, should also be considered as "inherent" time in this case. She therefore asks me to conclude that the "institutional delay" in this case is only eight months, within the acceptable range.

[47] For the reason given above, I reject that analysis, and conclude that the inherent time requirements of this case, due to the extra time the Crown had in evaluating and formulating the charges, and presenting the information to the court, make the period up to and including 3 June 2008, the appropriate period of "inherent delay". I therefore accept the applicant's argument that the delay attributed either to the Crown, or to institutional factors, encompasses the delay from 3 June 2008 to 28 September 2009, a period of almost sixteen months. The total delay in this case from the date of arrest 25 April 2008, until the proposed trial date of 28 September 2009, is over seventeen months, well beyond the constitutionally permitted standard for a case of this kind and with these facts.

Prejudice

[48] The most recent decision from the Supreme Court of Canada to discuss the prejudice that may arise from delay is that of Justice Thomas Cromwell, in ***R. v. Godin*** [2009] S.C.J. No. 26. In that case the accused was charged in May of 2005 with sexual assault, unlawful confinement, and threatening to kill his ex-girlfriend. The Crown elected to proceed summarily. In mid-September the trial dates were fixed for mid-February 2006. Four days before the trial, the Crown received a forensic report indicating that the DNA profile of the spermatozoa swab obtained from the complainant did not match the accused. In response to this, the Crown and the defence agreed that the Crown would re-elect to proceed by indictment in order to give the defence the opportunity to explore the complainant's evidence and the forensic report at a preliminary inquiry. The earliest date available was September 2006. Defence counsel wrote to the court and the Crown proposing earlier alternative dates on which he would be available. The Crown did not reply. The September 2006 preliminary date was adjourned for lack of court time. It was rescheduled and took place on 5 February 2007; some 21 months after the charges were laid. The matter was then set down for trial in November of 2007 almost 30 months from the laying of the charges. The defence brought a successful stay application in June of 2007. On appeal to the Ontario Court of Appeal, the stay was lifted, and a trial ordered. On appeal to the Supreme Court of Canada, the stay was restored. At paragraph 29 and following, Justice Cromwell dealt with the issue of prejudice :

> 29 The Court of Appeal disagreed with the trial judge's analysis of prejudice and found that any prejudice to the accused's interest in a fair trial was too speculative to be considered. Partly on this basis, the Court of Appeal found that the delay was not unreasonable. I respectfully disagree. In light of the length of the delay, of the Crown's failure to explain the multiple delays adequately, and of the prejudice to the accused's liberty and security interests - if not also to his interest in a fair trial -

> the delay in this case was unreasonable.
>
> 30 Prejudice in this context is concerned with the three interests of the accused that s. 11(b) protects: liberty, as regards to pre-trial custody or bail conditions; security of the person, in the sense of being free from the stress and cloud of suspicion that accompanies a criminal charge; and the right to make full answer and defence, insofar as delay can prejudice the ability of the defendant to lead evidence, cross-examine witnesses, or otherwise to raise a defence. See ***Morin***, at pp. 801-3.
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> 31 The question of prejudice cannot be considered separately from the length of the delay. As Sopinka J. wrote in ***Morin***, at p. 801, even in the absence of specific evidence of prejudice, "prejudice may be inferred from the length of the delay. The longer the delay the more likely that such an inference will be drawn". Here, the delay exceeded the ordinary guidelines by a year or more, even though the case was straightforward. Furthermore, there was some evidence of actual prejudice and a reasonable inference of a risk of prejudice.
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> 32 This approach was reflected in the trial judge's reasons, where he wrote that the delay in this case was "well beyond any reasonable interpretation of the [***Morin***] guidelines" (2007 CarswellOnt 5364, at para. 20) and that the appellant had suffered prejudice as a result. The judge referred specifically to the fact that the charges had been hanging over the appellant's head for a long time and that he was subject to "fairly strict" bail conditions (para. 22).

[49] In this hearing, I have concluded that the applicants suffered actual prejudice to two of the interests that are protected by 11(b) as explained by Justice Cromwell, in paragraph 30, above:

1) Liberty, as regards to bail conditions; and
2) Security of the person, in the sense of being free from the stress and cloud of suspicion that accompanies a criminal charge.

[50] I also rely on the analysis of Justice Cromwell in paragraph 31, above, in which he explains that the question of prejudice cannot be considered separately from the length of the delay. As stated by Justice Sopinka in ***Morin,*** supra, even in the absence of specific evidence of prejudice, "prejudice can be inferred from the length of the delay. The longer the delay the more likely that such an inference can be drawn".

[51] In this case the delay has exceeded the guidelines by at least five months, even though the case was not complex. Moreover, as I will explain below, I have also found actual prejudice to the applicants' liberty and security interests.

[52] In my view, even before we look at the evidence and arguments surrounding "actual" prejudice, the delay in this case has been too long, and I would stay the proceedings. However, there are added reasons to stay the proceedings, when we turn to the consideration of actual prejudice.

[53] The applicants argue that each has suffered substantial actual prejudice. Firstly, they argue prejudice due to their bail conditions and the limitations the bails placed on their ability to study and work. Secondly, the argue prejudice from the stress and cloud of suspicion that has accompanied their charges. The respondent argues that with respect to their lib-

erty interest, whatever prejudice they have suffered was essentially due to the fact of the charges, their own self-restraint, and not based on the actual, legal limitations of their bail conditions. The respondent also argues that the security of the person interest has not been affected, on the evidence before me, except by the fact of these charges and not by the delay.

[54] In her initial factum, and In her written submissions, prepared after I heard the testimony of the two applicants on 5 August 2009, Crown counsel submits that I should reject their testimony as establishing actual prejudice for a number of reasons:

> Mr. Ramsaroop
>
> He was unsure whether he had actually been paid by APUS during the first month of his bail.
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> His claim of a "chill effect" was unfounded on any actual limits on his organizing work.
>
> Mr. Ramsaroop missed only five meetings at Simcoe Hall due to his failure to seek permission from the administration to attend.
>
> Mr. Ramsaroop concluded that his outstanding charges would discredit his voluntary work for Justice for Migrant Workers, but could not give any examples of this supposed "discredit".
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> Mr. Ramsaroop's fear and anxiety over being "under surveillance" and a "victim of racial profiling", if valid, was due to the fact of the accused had been charged and not in any way related to the delay in the proceedings.
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> Mr. Ramsaroop did not relate any actual personal experience of being "under surveillance" while on bail.
>
> Mr. Ramsaroop could point to no repercussions from his voluntary disclosure to staff at Parkdale Community Legal Services that he was facing the charges before the court.
>
> Ms. Varga
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> Ms. Varga's affidavit and testimony provided no detail as to how her voluntary work was curtailed. It was her subjective fear that she would breach the no-contact provision in her bail, rather than any objective events.
>
> Ms. Varga's assertion that her marks justified acceptance into the PhD program at OISE and that her pending charges denied her access is pure speculation.

[55] It is recognized that there is a difference between prejudice arising from the fact of a charge and prejudice caused by delay. (***R. v. Rahey***, [1987] S.C.J. No. 23 (S.C.C.), ***R. v. Bennett***, 64 C.C.C. (3d) 449 (Ont. C.A.)Affd 74 C.C.C. (3d) 384 (S.C.C.) ***R. v. Silveira***, [1998] O.J. No. 1622 (G.D.). In ***R. v. Rahey,*** Bertha Wilson, speaking for the court states:

> 71 I wish to emphasize, however, the point I raised in my reasons in ***Mills***, supra, namely that the impairment or prejudice we are concerned with under s. 11(b) is the impairment or prejudice arising from the delay in processing or disposing of the charges against an accused and not the impairment or prejudice arising from the fact that he has been charged. The prejudice arising from the fact of being charged with a criminal offence is suffered even where the accused is tried within a reasonable time. It is, so to speak, inherent in the system itself. I agree with Lamer J., however, that that prejudice must be kept to a minimum by a speedy disposition of the charges against the accused. If this is not done, then the degree of

> prejudice will exceed that which is the inevitable concomitant of the system and be directly attributable to the delay under s. 11(b).

[56] I have concluded that, in addition to the prejudice that can be inferred from the length of the delay, the applicants have incurred actual prejudice from the delay.

[57] Christopher Ramsaroop is an only child. He resides with his mother at Apartment 515, 2063 Islington Avenue in Etobicoke. His father passed away when he was one years old.

[58] Mr. Ramsaroop received a Bachelor of Arts with Honours from University of Toronto in 2004. He received a Masters in Education for the Ontario Institute for Studies in Education ("OISE") in June of 2008. He has a distinguished resume of community involvement over the last fifteen years, including volunteer work for UNICEF, the Allan Gardens Project, the Asian Canadian Labour Alliance, and the Metro Network for Social Justice, and the Justice for Migrant Workers Collective ("J4MW") and since 2005 has served as a community organizer for the Association for Part-time Undergraduate Students ("APUS"). From 2002 to 2004 he served on the Academic Board and Governing Council of the University of Toronto, with one-year roles on Academic Appeals, and the Business Board of the University. This only scratches the surface of a resume that extends to seven pages and includes the active participation and organization of numerous conferences, the presentation of many University lectures and many publications.

[59] Mr. Ramsaroop is one of the first members of his extended family to obtain a post-secondary degree, and the first to obtain a Masters.

[60] Oriel Varga has a Masters degree at the University of Toronto. She has served on the Governing Council of the University of Toronto in 2004 and 2005. While on the Governing Council she also served on the Academic Board and the Academic Appeals Committee.

[61] Neither applicant has a criminal record.

[62] The applicant Christopher Ramsaroop testified before me that he has suffered prejudice arising from the delay in the areas of his employment, his family life, his organizing work as part of the Justice for Migrant Workers group ("J4MW") and in his activities on campus, including his work for the Association of Part-time Undergraduate Students ("APUS"), and at Parkdale Community Legal Services ("PCLS").

[63] Mr. Ramsaroop testified that he was not able to go to work at the University of Toronto for over a month, from 20 March 2008 to 25 April 2008 owing to the uncertainty about the charges and the police failure to bring the information before the court. Counsel for Mr. Ramsaroop argues that he was entitled to sign the constitutionally deficient Undertaking presented to him by the police, and then challenge the terms in court through section 503(2.2) of the Criminal Code. However, he was in a legal "limbo" by the police conduct in delaying the delivery of the requested paperwork to court. (See ***R. v. Petrovic*** [2006] O.J. No. 726 (S.C.J.)).

[64] Mr. Ramsaroop testified that this uncertainty continued throughout his bail pending

trial, but especially during the time period after he was released on 25 April 2008, and before his bail was varied on 23 May 2008.

[65] Mr. Ramsaroop's counsel argues that his client's work with J4MW and APUS has suffered a "chill effect" for fifteen months to this point, and he has shied away from his usual role as a spokesperson and negotiator in key situations.

[66] Mr. Ramsaroop testified that he has not been able to participate as an affiant in an important legal proceeding affecting migrant farm workers; for fear that his involvement might "taint" the credibility of the migrant group in the proceedings. He testified he has not been able to effectively organize or participate in his work with APUS and J4MW as a result of the charges and the long delay in their coming to trial.

[67] He testified that he has suffered additional stress by having to disclose his charges to his employer, PCLS, and not be able to meet the allegations before this court in a timely way, causing the allegations to fester in the minds of his co-workers.

[68] Mr. Ramsaroop testified his mother, with whom he has a close relationship and who has health conditions which are exacerbated by stress, has been caused stress by Mr. Ramsaroop's period of time before the courts, which in turn has caused Mr. Ramsaroop a significant degree of concern and related stress.

[69] Mr. Ramsaroop testified that he has refrained from participating in events on the campus of the University of Toronto out of concern for overzealous policing and his own status as a racialized activist.

[70] Similarly, Oriel Varga testified before me that she has suffered prejudice because of the conduct of the investigation and the inordinate amount of time this matter has been before the courts.

[71] Ms. Varga testified that at the time of the "sit-in" she was a candidate for a Masters of Education degree at the University of Toronto. She testified that she has now received her degree.

[72] Ms. Varga testified that in January of 2008 she applied to become a candidate for the PhD program in Sociology at the Ontario Institute for Studies in Education ("OISE"). Her application was turned down at the end of 2008, and she fears that her academic future has been prejudiced by these charges remaining before the court for so long.

[73] Ms. Varga testified that when these charges were laid she was a "Liaison Officer" for "APUS" on behalf of part-time students at the University of Toronto. She is now the "Executive Director" of APUS.

[74] Ms. Varga testified that in her work with APUS and in other "social justice initiatives she does on a volunteer basis in the community for "people from marginalized communities" she frequently relies on e-mails and other "newsgroup" mailings in which some of her co-accused were likely recipients or group members. She testified that she was paralyzed in

doing her work for fear that any involvement by her in these communication networks would be construed as a "failure to comply" with her bail and thus lead to her arrest and possible incarceration.

[75] Ms. Varga testified that the bail cut her off from her previous close association with Mr. Ramsaroop, which was essential for her work as a liaison officer and later executive director of APUS.

[76] In paragraphs 38 to 44 of her factum, and in her written submissions prepared after the applicants testified, the Crown argues that there has been no actual prejudice to the applicants save that which they have imposed upon themselves. The implication is that "self-imposed" restraint from an accused cannot give rise to actual prejudice. With this assertion I must respectfully disagree.

[77] In my conclusions about "actual" prejudice under headings of "liberty" and "security of the person", I consider self-restraint due to bail conditions and personal stress due to the effect of the delay on family members and ongoing community work valid factors to consider.

[78] On 25 April 2008 Mr. Ramsaroop was initially released from the station with the requirement that he have no contact directly or indirectly with his named co-accused except for the purposes of attending classes and denied access to the University of Toronto campus except to attend classes.

[79] On 25 April 2008 Ms. Varga was arrested and held overnight for a show cause hearing. On 26 April 2008 she was released at a hearing in which it was ordered that she also have no contact with her named co-accused except for the purposes of attending classes and "legitimate" employment purposes.

[80] On 23 May 2008 Mr. Ramsaroop's release conditions were varied out of court on consent to permit him to attend campus and have contact with his co-accused for the purposes of his employment with the students association. The variations were set out in Schedule "A" read:

> 2. Notify in writing the officer in charge Detective Mike Leone, #4709, at 52 Division of any change of address at least 24 hours in advance.
>
> 3. Not to communicate directly or indirectly with ALI, Noaman; AZADIAN, Farshad; GRANADOS CEJA, Luis; HAY, Michael; HAYES, Ryan; MIRANDA, Farrah; RODRIGUEZ, Gabriela; SCHOFIELD, Liisa; SEVI, Semra; SHAHIDI, Faraz; SHAHIDI, Golta; VARGA, Oriel; or WONG, Edward except in the presence of counsel for the purposes of preparing a defence or while attending court or unless required to attend the same classes at the university of Toronto or for the purposes of employment.
>
> 4. Not to enter Simcoe Hall at the University of Toronto unless with the written permission of the administration of the University of Toronto.

5. Not to communicate directly or indirectly with Bryan MacPherson,MargieHalling,JimDelaney,Sheree Drummond and Anthony Gray, unless responding to communications initiated by any of the above named persons.

6. Not to participate in any unlawful demonstrations on the property of the University of Toronto.

[81] These release conditions, while drafted and of course, consented to, as relatively common components of a release pending trial, do none-the-less pose serious restraints on the applicants' liberty interests.

[82] In my view, the applicants' ability to carry out their normal community work for APUS and other organizations was seriously undermined by the non-communication clauses, and even to attend classes was problematic, despite the qualifications in each release.

[83] In Ms. Varga's case, the addition of the term "legitimate" in qualifying the employment exemption, required Ms. Varga to attempt to calculate how this term might be construed by the police and by the courts, if she were re-arrested. It is vague, and probably unenforceable, but that is no comfort to a person who could be subject to arrest for an apparent breach.

[84] Mr. Ramsaroop's varied bail did amend his "non-communication" clause to permit him to attend the "same classes" as his co-accused and to communicate with them for "purposes of employment." It also required him to agree to not participate in any "unlawful" demonstrations on the campus. Unfortunately, for the Crown in her argument, in considering the impact of these two provisions on Mr. Ramsaroop's liberty interest, they are obvious.

[85] By qualifying course attendance to the "same classes" this clause requires Mr. Ramsaroop to inform himself with precision about who is likely to attend his classes, and to avoid any incidental contact that might take place in the normal course of attending school. The reference to "unlawful" demonstrations suffers from a similar deficit as the use of "legitimate" in Ms. Varga's release. It requires Mr. Ramsaroop to try to determine how his work for APUS and other groups on campus might be construed by the police or the University authorities. Its inevitable result objectively is the fifteen month "chill effect" of which the applicant complains.

[86] The Crown submits that there has been no actual interference with the applicants "security of the person", that their testimony as to the stress they have been under is undocumented and not justifiable based upon their "actual" circumstances. This is framed as a challenge to their credibility as witnesses and as well, an attempt to reduce their concerns to self-restraint, founded on speculation. I find that I must disagree with this analysis, on the facts before me.

[87] In my view, the self-restraint exercised by the applicants in this case is an understandable and logical response to the bail conditions to which they were subject. It is also understandable that these attempts at self-restraint resulted in personal stress as the case dragged on.

[88] In addition, the Crown asks me to ignore Mr. Ramsaroop's relationship with his mother, and her circumstances, in evaluating the actual "prejudice" Mr. Ramsaroop has experienced as a result of the delay in bringing this matter to trial. In paragraph 42 of her factum, the Crown states: "More importantly, whether Mr. Ramsaroop's mother suffered from stress is not relevant to these proceedings." I again find that I must disagree.

[89] Mr. Ramsaroop has testified that he resides with his mother in a nuclear family in which they are the only members. He testified that he is her only immediate family member, as his father passed away when he was one, and his maternal grandmother and his mother's brother passed away in 2007. His relationship with his mother is his primary personal relationship and family responsibility.

[90] In my view the effect that these charges remaining before the courts has had on Mrs. Ramsaroop, and the resultant stress she has suffered, is a factor to be considered in this intimate family setting. It would be wilfully blind of me to ignore the effect of this on the applicant, Mr. Ramsaroop. I accept his testimony that his mother's stress and discomfort at these charges remaining before the courts has caused him considerable stress and grief, and affected his well-being.

[91] I find Mr. Ramsaroop a credible and reliable witness as to the impact of this proceeding on both his "liberty interest" and his "security of the person" interest. He has impressive curriculum vitae at this stage of his academic career, and I found him credible in recounting the impact of the delay in these proceedings on his day-to-day activities.

[92] I also accept the testimony of Oriel Varga, that she has suffered actual prejudice because of these charges remaining outstanding, and has had difficulties carrying out her duties as Executive Director of APUS because of her bail conditions that remain in place.

[93] Finally, I accept that there has been inferred prejudice from any delay outside the constitutionally accepted norms that affects the security of the person interests that the *Charter* seeks to protect. (See ***R. v. Silveira*** [1998] O.J. No. 1622, ***R. v. Kovacs-Tatar*** [2004] O.J. No. 4756 (Ont. C.A.)***, R. v. Tricker***, 2008 [2008] O.J. No. 4147) and ***R. v. Godin*** [2009] S.C.J. No. 26 (S.C.C.).

The Societal Interest

[94] The societal interest in law enforcement, and more specifically in seeing persons accused of criminal activity brought to trial and their cases decided on the merits, is addressed by Justice Sopinka, in ***Morin,*** supra, at paragraph 30, where he discusses the purpose of Section 11(b) of the *Charter:*

> 30 There is, as well, a societal interest that is by its very nature adverse to the interests of the accused. In ***Conway***, a majority of this Court recognized that the interests of the accused must be balanced by the interests of society in law enforcement. This theme was picked up in ***Askov*** in the reasons of Cory J. who referred to "a collective interest in ensuring that those who transgress the law are brought to trial and dealt with according to the law" (pp. 1219-20). As the seriousness of the offence increases so does the societal demand that the accused be brought to trial.

> The role of this interest is most evident and its influence most apparent when it is sought to absolve persons accused of serious crimes simply to clean up the docket.

[95] There is no trial evidence before me regarding these charges. However, it is before me that all the charges against the other accused on the Information before this court have been withdrawn or stayed.

[96] Without putting overwhelming reliance on facts which are not yet adjudicated, it is clear that this is not a circumstance where a court is being compelled to absolve persons of serious crimes simply to clean up the docket.

[97] Each of the applicants has no criminal record.

[98] Each applicant has served the University of Toronto as a member of the Board of Governors and each has made contributions to the academic and student life on campus, as well as in the larger community.

[99] Each applicant has had the talent to achieve advanced post-graduate degrees from the University.

[100] Each applicant has suffered both implied and actual prejudice because of the long delay in bringing these matters to trial.

[101] The above factors, in my view, substantially outweigh the societal interest in having a trial of this matter on the merits.

[102] In the result, the charges against each of the applicants are stayed.

Released: 10 September 2009

Signed: “Justice Paul H. Reinhardt”