SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Hartlen, 2014 NSSC 456

Date: 20141118
Docket: *Halifax*, No. 413906
Registry: Halifax

Between:

Her Majesty the Queen

v.

John Wayne Hartlen

Restriction on Publication: pursuant to *s.486 Criminal Code* {Name of Complainant}

Judge:	The Honourable Justice John D. Murphy
Heard:	November 3, 2014, in Halifax, Nova Scotia {Oral decision rendered November 18, 2014.}
Written Decision	January 14, 2015
Counsel:	Scott C. Morrison, for the Provincial Crown Ian Hutchison, for the Defence

By the Court:

Introduction

[1] The Accused, Mr. Hartlen, has applied for a Stay of Proceedings pursuant to *Sections 11(b)* and 24 of the *Charter and Rights of Freedom*s. He maintains that there has been excessive delay between the laying of the charge and the scheduled trial. The charge, an allegation of indecent assault contrary to the *Criminal Code s.149*, was filed July 14, 2011 and trial is presently scheduled for January 19, 2015. The time between the laying of the charge and the trial, assuming it proceeds as scheduled, would be 3 years, 5 months and 16 days, 3 years 5.5 months in round numbers. The charge relates to an historical sexual assault, alleged to have occurred during 1976 and 1977.

[2] The parties have provided extensive briefs addressing the relevant law and the applicable authorities, and they have also analyzed the timeline between the filing of the charge and the pending trial date. Counsel have reached agreement as to how the passing of substantial portions of that time should be attributed. Mr. Hartlen and his wife testified during the motion hearing.

[3] The authorities with respect to *s.11(b)* have been thoroughly canvassed by counsel, and include three leading Supreme Court of Canada decisions: **R. v. Askov**, [1990] 2 S.C.R. 1199; **R. v. Morin**, [1992] 1 S.C.FR. 771; **R. v. Godin** 2009 SCC 26. Those cases direct that the Court address the rights of the accused protected by *s.11(b)* of the *Charter*, and also society's interest in bringing cases to trial. The authorities indicate that the Court must also consider:

1) the circumstances of the delay including

    a) length of the delay,

    b) any waiver by an accused,

    c) the reasons for the delay, which are categorized by the courts into

        i) inherent time requirements of the case,

        ii) the actions of the accused,

        iii) the actions of the crown,

        iv) limits on institutional resources,

v) other reasons; and

2) prejudice to the accused.

[4] The authorities have established guidelines with respect to time passage; however, I emphasize and caution that courts should not "lose sight of the forest for the trees." Assessing delay is not just a mathematical calculation; nevertheless, time which passes is attributed to either that which "counts", if I can put it that way, in calculating whether there has been a delay which affects the accused's rights, or time which does not activate *Charter s.11(b)* and *s.24*. Those calculations and attributions must be made, although there is leeway to assess particular circumstances and the situation overall.

[5] The Guidelines from the Supreme Court in **Morin** and **Godin** indicate a court should become concerned about delay when limits on institutional resources and crown actions, and in some cases other events, result in passages of time exceeding 8 to 10 months in Provincial Court up to the preliminary hearing stage before committal for trial, and 6 to 8 months in Supreme Court after committal. When delay extends beyond that range, when time lapses which "count" exceed a total of 14 to 18 months, a flag is raised, and delay becomes a factor which the court should examine to determine if an accused's *s.11(b)* rights are infringed.

[6] Nova Scotia Courts have considered *s.11(b)* and the Supreme Court of Canada decisions, and follow that Court's analysis. Our Court of Appeal in **R. v. REW** 2011 NSCA 18, upholding a trial court decision, confirmed that systemic or institutional time lapses from charge to trial should not be in a range greater than about 18 months; after that 18-month period, some investigation is warranted. No one disputes that inquiry is warranted in this case, where the total "charge to trial" time is almost 3.5 years.

[7] This Court has recently addressed the issue, assessed time periods, and considered in particular circumstances prejudice to an accused and society's interest in bringing persons to trial. Three decisions which I find particularly helpful examine delay in context, and provide much more than a mathematical calculation: **R. v. Kazi** 2013 NSS 96; **R. v. Burns** 2014 NSSC 317, and **R. v. Clare** 2014 NSSC 388.

[8] Some lapses of time as a case proceeds are inevitable; reasonable periods must be allowed for normal progression in the system – these reasonable time requirements are deemed "inherent", are treated as "neutral", and do not "count" when addressing *Charter s.11(b)* rights.

[9] I will first address the categorization of the delay. As I have noted, the parties agree how substantial portions of the 3 years 5.5 months time lapse should be attributed.

[10] Overall the pre-committal time lapse, that is before the committal in Provincial Court, was 567 days, approximately 19 months, and post-committal time will be 668 days, approximately 22 months – about 41.5 months altogether. The parties are in agreement that there was no waiver of any delay or any time lapse by the Accused.

[11] The principal events relevant to Mr. Hartlen's present application occurred on dates shown in the following table. Approximate time lapses between dates are indicated (except for agreed "inherent" lapses) and are categorized based on the parties' agreements, or identified as "to be determined" by the Court.

PROVINCIAL COURT

Date	Activity	Approximate Lapse	Category
July 14, 2011 to December 5, 2011	Mr. Hartlen arrested and charged, Information laid, Appearances in Provincial Court, adjournments for disclosure.		**AGREED:** Inherent Time Requirements
December 5, 2011 to December 21, 2012	Election; Preliminary Inquiry scheduled for November 1, 2012. Pre-inquiry conference in Provincial Court, additional disclosure. Preliminary Inquiry adjourned to December 21, 2012.	12.5 months	**AGREED:** Institutional Delay and Crown Actions
December 21, 2012 to March 22,	Preliminary Inquiry begins. Defence	3 months	**TO BE**

2013	requests Complainant's notes. Disclosure ordered. Preliminary Inquiry adjourned to March 22, 2013 and concluded. Mr. Hartlen committed.	**DETERMINED:** Crown says "Defendant's Actions" (akin to Third Party Records requests). Accused says Institutional or Inherent Delay.

SUPREME COURT

Date	**Activity**	**Approximate Lapse**	**Category**
March 22, 2013 to October 2, 2013	Crownside appearances; Pre-trial conference. Trial date set for February 2014. Defence counsel appointed to Supreme Court.	6.5 months	**AGREED:** Institutional Delay
October 2, 2013 to November 21, 2013	Accused retains new counsel, who obtains trial adjournment to September 29, 2014, and schedules Third Party Records Application for May 2014.		**AGREED:** Inherent Delay
November 21, 2013 to March 27, 2014	Trial pending. Period before Crownside appearance after scheduling error discovered	4 months	**TO BE DETERMINED:** Crown says Inherent Delay. Defence says Institutional.
March 27, 2014 to July 15, 2014	Court reschedules Trial to January 2015 because no judge available for September 2013 Trial.	3.5 months	**TO BE DETERMINED:** Crown says Inherent

	Defence advises Court July 15, 2014 that Third Party Records Motion will proceed.		Delay. Defence says Institutional Delay.
July 15, 2014 to September 29, 2014	Time between Defence confirming Third Party Records Motion will proceed and Trial date set in error for a time when no judge available.	2.5 months	**AGREED:** Institutional Delay
September 29, 2014 to January 19, 2015	Time between Trial date set in error and final rescheduled date.	3.75 months	**TO BE DETERMINED:** Defence says Institutional Delay. Crown says "other" reasons which should not "count."

[12] The parties suggest, and I agree with them, that with respect to the pre-committal time, the period from December 5, 2011 to December 21, 2012 – that's a total of 381 days or about 12.5 months – is attributable to institutional delay and delay for which the Crown is responsible, and therefore that time "counts" for the *s.11(b)* calculation. There are a number of different places that I can obtain those numbers – but they are not in dispute; perhaps the most readily apparent is from summary at Tab 3 of the crown's brief.

[13] There was discussion during the hearing, when making the time lapse calculation, whether time during an adjournment of the preliminary inquiry while the complainant's notes were retrieved should count against the crown as institutional delay or whether that period should be considered either inherent delay or defence responsibility akin to a third party records motion. Ultimately the defence did not insist on attributing that period to institutional or "counting" delay, and I agree with the crown that the time is not part of the analysis to determine whether Mr. Hartlen's *s.11(b)* rights were infringed. So I have not counted the period from December 21, 2012 to March 22, 2013 when calculating the 12.5 months pre-committal delay which is to be considered in the *s.11(b)* determination.

[14] The parties take different positions about post-committal lapse of time. The crown acknowledges that there were 270 days or approximately 9 months of institutional delay post-committal, and say that's all that "counts."

[15] The crown calculated the 270 days post-committal as consisting of the 6.5 months from Committal on March 22, 2013 to October 2, 2013 (when Mr. Arnold, the Accused's original counsel, was appointed to the Bench), and also a period after July 15, 2014, the date defence counsel advised that they would definitely be making motions under *s.11(b)* and a Third Party Records Motion. The crown acknowledges the 2.5 months from that declaration on July 15, 2014 until September 29, 2014, the date that the case had been scheduled for trial before addressing the court scheduling error, was an institutional delay period that should "count."

[16] Therefore, the crown maintains that there was 9 months post-committal delay resulting in approximately 21.5 months total delay from the laying of the charge, not very much beyond the 18-month guideline.

[17] The crown says that no time between Mr. Arnold's judicial appointment on October 2, 2013 and July 15, 2014 when defence counsel indicated they would be proceeding with pre-trial motions, should "count." The crown maintains that Mr. Hutchison, present defence counsel, was not trial ready until he made his declaration with respect to the motions on July 15, 2014. The crown also says that the delay which resulted when the trial, originally scheduled to start September 29, 2014, was postponed until January 19, 2015 should not "count" as it was not a time lapse relevant to a *s.11(b)* determination. When a scheduling error was discovered, [see para.20, *ante*] the court initiated another crownside appearance, and moving the trial date from September 29, 2014 to January 19, 2015 added about 3 and 2/3 (3.66) months to the timeframe.

[18] The defence on the other hand, attributes much more of the post-committal time lapse as "counting" time. Before I address the defence submission on post-committal delay, I want to summarize briefly the events following Mr. Hartlen's lawyer's appointment to this Court on October 2, 2013. Very soon after that, Mr. Hutchison was retained and on November 7, 2013 he wrote to the Court with a copy to the crown seeking to arrange a crownside appearance to obtain an adjournment of the trial which at that time was scheduled for February 13, 2014. That appearance to request the adjournment took place November 21, 2013.

[19] I have examined the logs and the court notes from that appearance; there was no reference to a specific length of time requested for the adjournment. The first date that the court was able to offer after the February 13, 2014 date, which was being postponed, was starting on May 29th, some 3.5 months later. Neither crown counsel nor defence counsel was available at that time. The Accused's election was for a jury trial – no jury trials are held during the summer months in this court – so the next free court date was September 29 to October 7, 2014. Everybody was available, so the trial was rescheduled for September 29, 2014.

[20] Subsequently, administrative officers at the court discovered that an error had been made when trial was set for September 29th; in fact, the annual judges' conference took place at that time and trials were not to be scheduled. So on March 27, 2014 there was a further appearance to set new dates as a result of the unavailability of the court on September 29th. I have also reviewed that court log, and the first date which was available for both parties after September 29, 2014 was January 19, 2015 – and that's the date that remains set for trial. The time lapse is about 3.5 months from September 29, 2014 to January 19, 2015.

[21] The defence's position is that much of the time between October 2, 2013 and July 15, 2014, when defence indicated they would be proceeding with the motions, and also the time after September 29th, because the trial was rescheduled to January, should "count" for *s.11(b)* calculation purposes. The defence does agree with the crown that the period from October 2, 2013 to November 21, 2013 (that's from Mr. Arnold's appointment until the date a new trial date was set to accommodate the delay request from Mr. Hutchison) was an inherent delay and should not "count."

[22] The disagreement concerns the time lapse between November 21, 2013 (when trial was set for September 2014) and January 19, 2015, the trial date that's presently scheduled. The defence say that is all institutional delay of one sort or another and should count. That is a span of almost 14 months – from appearing November 21, 2013 to get a new date after Mr. Arnold's appointment, including the time loss from the scheduling error, until January 19, 2015. The defence would add those 'almost 14 months' to the approximately 19 months agreed "count" period up to November 21, 2013. If the defence's position of 14 months institutional delay after November 21, 2013 were accepted, there would be a total charge to trial time in excess of 32 months attributable to institutional or other non-inherent delay for which the defence are not responsible. That time would be well beyond the guidelines.

[23] The crown, as I have indicated, suggests the only "countable" time after November 21, 2013 is between July 15, 2014, when defence confirmed that there would be motions, and the scheduled trial date of September 29, 2014, before postponement due to the scheduling error. That is 2.5 months or about 76 days, which the crown counts to reach the total of 21.5 months I referred to earlier in paragraph 16.

[24] I have reviewed the facts, the explanations by the parties, and the court logs to categorize the delay. I have considered the authorities which address how time should be attributed with respect to the two Supreme Court periods in question – from November 21, 2013 to July 15, 2014 and from September 29, 2014 to January 19, 2015 – to determine what, if any, portion of those periods which total approximately 11 months is relevant in the *s[11](b)* Application.

[25] The crown maintains November 21, 2013 to July 15, 2014 should not "count" because the defence did not state a final intention to proceed with the motions and therefore they were not ready. With respect, I disagree with the crown's position. It is correct that defence counsel did not make the final call on whether they would proceed with the pre-hearing motions, including this motion, until July 2014, but in my view that did not hold up or delay the progress of the case. The defence decision announced on the 15th of July to proceed with the motions was made in the context of an established trial date of January 19, 2015. There was no urgency about the scheduling of the motions in order to bring the case to trial; the trial date did not change as a result of the defence's decision to proceed with those motions. It was always understood that if motions were going to be heard, that would occur before the fixed trial date and would not affect the trial date.

[26] I conclude that the defence was ready to proceed with motions as necessary in ample time to accommodate the trial dates; that was the situation when the trial was planned for September 2014 and the motions were scheduled for May of 2014, and when the trial was postponed until January 2015 and the motion scheduling was adjusted to November and December 2014. The defence's not making an earlier decision about motions did not affect the trial dates – it did not contribute to any delay. I therefore disagree with the crown that "counting" time after November 21, 2013 did not start running until July 15, 2014.

[27] On the other hand, I do not agree with defence counsel that the entire period November 21, 2013 to July 15, 2014 should be 'counting' time. I adopt Justice Rosinski's reasoning in **Burns** that institutional delay should not start immediately on the day that a trial is scheduled in the Supreme Court and then run

all the way to trial. I agree with Justice Rosinski that there ought to be a period of neutral time between the assignment of the trial date and the actual trial. It is unrealistic to expect that crown and defence counsel are ready to jump into a trial the day after it is scheduled – it just does not work that way. There is some inherent delay time required for preparation, particularly defence preparation, and for any *voir dires* or motions between the setting of a trial date and the actual trial. In **Burns** that was held to be about 3 months, and I agree that is a reasonable amount of time; in fact, I consider it to be a minimum reasonable amount in this case as motions have clearly been needed. When scheduling pre-trial hearings we anticipated requiring approximately 3 months between the October 2014 filing of motion briefs and the mid-January 2015 scheduled trial date in order to address pre-hearing *voir dires* and motions concerning this issue, the third party records matter next week, and another evidence issue in December.

[28] In my view it is appropriate in this case to allow at least 3 months inherent time lapse between assigning a trial date and the hearing. There was no indication in November of 2013 when the February 2014 trial date was delayed that defence counsel would be ready to start trial within 3 months of the assignment; in fact, in November they were seeking an adjournment of the February date.

[29] I therefore find that something in excess of 3 months of the time after November 21, 2013 should not be deemed institutional or other "countable" delay. In the interests of rounding and allowing a little extra time, I extend that to 3.75 months of inherent or neutral time requirement in this case. Thus 3.75 months of the period between November 21, 2013 and July 15, 2014 will not "count" for *s.11(b)* determination; and that acknowledges the time needed for motions, *voir dires* and for other "inherent" activity.

[30] The balance of the time beyond 3.75 months between November 21, 2013 and July 15, 2014 is in my view institutional delay. The total time period from November 21, 2013 to July 15, 2014 is about 7.75 months. I attribute 3.75 months of that to "inherent" requirements, following the **Burns** approach, and the balance – 4 months – to institutional delay which "counts."

[31] Adding that 4 months institutional delay to the 21.5 months acknowledged by the crown up to September 29, 2014 (December 5, 2011 – December 21, 2012 – 12.5 months; March 22, 2013 – October 2, 2013 – 6.5 months; July 15 – September 29, 2014 – 2.5 months) brings the total delay to be considered for *s.11(b)* up to 25.5 months for the period until September 29, 2014, the trial date that was contemplated before the court scheduling error.

[32] We now come to the consequences of the scheduling *faux pas* by the court which added about 3.66 months to the wait time to get to trial – from September 29, 2014 to January 19, 2015. The defence says that that is institutional delay which should count, taking substantial comfort from Justice Duncan's decision in **Clare**. At paragraph 57 Justice Duncan deemed delay as a result of a court scheduling error, indeed coincidentally resulting from the same judges' conference, to be institutional. He said at paragraph 57, "I conclude there was unreasonable institutional delay of three months caused by the court scheduling error."

[33] The crown disagrees that is institutional delay and says it is 'other' "non-institutional" which should not count. I have considered the crown's position and the three decisions the crown references: **Morin**, *supra*, **R. v. Shendaruk** 2004 Sask QB 44, and **R. v. Kuspira** 2013 ABPC 117. The crown's position that the type of delay in issue was categorized as 'other' in those cases is correct; however, I disagree with the crown that that such "other" delay should not "count." In each of those cases to which the crown referred the Courts recognized that even though delay was not called 'institutional', if it fell in the 'other' category, it could still be a delay which "counted", depending on the circumstances. So 'other' delay can 'count' if the circumstances warrant.

[34] The Supreme Court of Canada in **Morin** addressed inherent delay, institutional delay, and actions of the accused and the crown. The majority then dealt with "other" reasons for delay, and said at paragraphs 54 and 55:

> 54. There may be reasons for delay other than those mentioned above, each of which should be taken into consideration. As I have been at pains to emphasize, an investigation of unreasonable delay must take into account *all* reasons for the delay in an attempt to delineate what is truly reasonable for the case before the Court. One such factor which does not fit particularly well into any category of delay is that of actions by trial judges. An extreme example is provided by **Rahey**, supra. In that case it was the trial court judge who caused a substantial amount of delay. Nineteen adjournments over the course of 11 months were instigated by the judge during the course of the trial. Such delay is not institutional in the strict sense. Nevertheless, such delay cannot be relied upon by the crown to justify the period under consideration.
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> 55. Other delays that have not been mentioned may weigh against the accused, but in most cases delays will weigh against the crown…

[35] Other delays can operate against the crown, and the issue is whether the "other" delay resulting from the court scheduling error should "count" in this case.

[36] The additional decisions cited are very helpful in categorizing the 'other' delay in this case. The delay under consideration in **Shendaruk**, *supra*, was a lapse of 11 months, 8 months of which arose from the need to reschedule a preliminary hearing that had originally been set for a date when no courtroom was available.

[37] Although the court did not determine the "other" delay to be institutional, it did not deem it to be neutral, saying at paragraphs 40 to 48:

> **40.** The more focused question then becomes the effect of the additional 11 months which I have identified. What is the nature of this period of delay? The administrative oversight leading to the adjournment from May 6, 2001 to January 2002 must be considered under the criteria of "other reasons for delay" as identified by Justice Sopinka in **Morin**.
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> …
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> **42.** None of the elapsed time from May 6, 2001 to April 10, 2003 could in any way be attributed to the defence. On both May 6, 2001 and January 9, 2003, the accused was present with counsel and ready to proceed and counsel on the record indicated his readiness to proceed.
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> …
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> **48.** I've come to a different conclusion when one considers the additional 11 month delay…[It] is a period of time which falls outside the general criteria set forth in **Morin**.…the 11 months in my view does demonstrate a breach of that fundamental *Charter* right." That's the *s.11(b)* right. I am mindful of the fact that the charge against the accused is serious and that society has a real, significant and vested interest in having the accused brought to trial. I am, however, further of the view that both the accused and society have a strong and ongoing interest in an accused's trial occurring expeditiously and within a reasonable period of time. In this instance, I have concluded that latter interests outweigh the former…."

[38] In **Shendaruk** the delay caused by the scheduling error was deemed 'other', but it "counted", and was relevant to the *s.11(b)* determination.

[39] In **R. v. Kuspira**, *supra*, one adjournment arose from a scheduling error; at paragraphs 96 and 97, the Court stated:

> **96.** The remaining delay is attributable to institutional delay, and adjournments (giving rise to further delays). One adjournment arose from a scheduling error and two were attributable to the crown. All delays were occasioned by organs of the state.
>
> **97.** No delays were attributable to the Applicant.

[40] The Court in **Kuspira** "counted" the delay resulting from the scheduling error, and found the Applicant's right to be tried within a reasonable time pursuant to *s.11(b)* had been breached.

[41] The Courts' rulings in **Shedaruk** and **Kuspira** that scheduling errors "counted" are consistent with Justice Duncan's decision in **Clare**. Whether time lapse from a court scheduling error is deemed "institutional" as in Clare, or "other" as in **Shendaruk** and **Kuspira**, the 3.66 months from September 29, 2014 to January 19, 2015 should "count" when making a *s.11(b)* determination.

[42] I have determined previously that there was an approximate 25.5-month delay "countable" to September 29, 2014; adding the 3.66 months from that date until January 19, 2015 brings the total delay relevant to the *s.11(b)* issue to about 29 months. As I have been approximate in calculating some time lapses and have "rounded" some time periods, to be fair to the crown, I will deem a time lapse of at least 27 months to be not in any way attributable to inherent court requirements or to the Accused, and to "count" when addressing Mr. Hartlen's *s.11(b)* rights. *Prima facie*, that amount of time exceeds the 14 to 18-month guideline prescribed by the authorities by at least 50 per cent.

[43] I will address prejudice; institutional and "other" relevant delay in excess of 18 months prompts the Court to determine whether an accused has been prejudiced. Inherent prejudice is to be assumed once the 18-month "flag-raising point" is exceeded; the presumption of prejudice increases with the passage of time. In this case the crown has not rebutted the presumption that the passage of time has caused prejudice to the Accused.

[44] The Court also considers whether an accused has encountered actual prejudice. I have assessed Mr. Hartlen's evidence and the testimony from Mrs. Hartlen, and I am satisfied that actual prejudice to Mr. Hartlen has been established. Mr. Hartlen is 71 years old; before being charged, he was active and respected in the community and participated in various activities. The evidence shows that is no longer the case. His lifestyle has changed; his counselling practice has been curtailed; his income has dropped – the numbers are uncertain – his recollection with respect to income in 2010/2011 was not clear, and that is an indication that the passage of time has caused some prejudice. Mr. Hartlen felt compelled to notify his clients of the charge, he has had sleep difficulties; he indicated the matter is constantly on his mind and affects his work judgement. I note that the bail restrictions are not a factor in this case; they have not affected his lifestyle.

[45] I am satisfied after observing Mr. Hartlen testify that he does have some memory difficulties – that is not a medical opinion, but an observation. He had some difficulty with the accounting and the income figures in 2010 and 2011. Mr. Hartlen's memory of those matters was unclear, and that is something I have taken into consideration in addressing the passage of time and his ability to respond to this charge.

[46] Mrs. Hartlen confirmed how case is affecting her husband and emphasized that it is an increasing problem. She described the situation as a state of turmoil, getting worse as time passes, that Mr. Hartlen is becoming withdrawn and is often in a "funk."

[47] I am satisfied based on that evidence that there has been actual prejudice to Mr. Hartlen resulting from the delay; it has affected his quality of life and his income, and the prejudice is beyond the inherent prejudice which results from a delay – there is particular prejudice to the Accused in this case.

[48] The allegation of historic indecent assault is a serious charge. The interest of the State, the public, and the Complainant who has faced difficulty coming forward and going through a preliminary hearing are issues that must be considered. The Complainant, public interest and society's desire to conclude trials are important considerations, but the fact that the case involves a serious charge and an historic charge does not diminish Mr. Hartlen's *s.11(b)* rights to have his trial within a reasonable period of time.

[49] I have weighed all the factors and have concluded that there has been an unreasonable time lapse in this case attributable to institutional delay, crown activity and other matters such as the court scheduling error which should "count" in calculating the time relevant to *s.11(b)* consideration. The passage of more than 27 months is over one and a half times the guideline, and substantially in excess of the 21 months referred to by Justice Duncan in **Clare**, as the time one might allow for a case to get from the laying of the charge to trial in Nova Scotia. The time lapse combined with the inherent and actual prejudice encountered by the Accused have led me to conclude that in all the circumstances the delay has been excessive and violated the Accused's right under *Charter s.11(b)* to have trial within a reasonable time. That outweighs the public interest in bringing this case to trial and as a result, the prosecution against Mr. Hartlen is stayed.

[50] Sir, you are discharged and you are released from the conditions in your undertaking. The matter is concluded.

J.