SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Kazi, 2013 NSSC 96

Date: 20130221
Docket: CRH 391464
Registry: Halifax

Between:

Her Majesty the Queen

Plaintiff

v.

Malachy Ahmed Kazi

Defendant

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice Kevin Coady

Heard: February 15th, 2013, in Halifax, Nova Scotia

Written Decision: March 11, 2013

Counsel: Catherine Cogswell, for the Crown
Wayne Bacchus, for the defendant

By the Court:

[1] On September 14, 2010, Halifax Regional Police swore an information against Malachy Kazi alleging the following offences:

> That between the 18th day of July, 2010, and the 21st day of July, 2010, at Halifax, did for a sexual purpose touch M. S., a person under the age of 16 years directly with a part of his body, to wit, his tongue, contrary to section 151 of the *Criminal Code*.
>
> And further that he at the same time and place aforesaid, did unlawfully commit a sexual assault on M. S., contrary to section 271(1)(a) of the *Criminal Code*.

Mr. Kazi elected trial by a Supreme Court Justice without a jury and indicated that he required a preliminary inquiry.

[2] The record indicates that the complainant at the time of the alleged offence was 7 years old. Mr. Kazi was released on an undertaking given to a peace officer and required to attend court on September 28, 2010. Mr. Kazi's trial was scheduled for February 11-15, 2013. On January 15, 2013 Mr. Kazi filed a notice of *Charter* application. The notice indicated that he was alleging infringement of his right to be tried within a reasonable time pursuant to section 11(b) of the *Charter*. As a remedy he sought a stay of the charges pursuant to section 24(1) of the *Charter*. Mr. Kazi stated that "at the time this matter appears for trial it will have been more than 30 months delay since the defendant was initially charged; August 10, 2010".

[3] On January 31, 2013 a telephone pre-trial was held at the urging of the Crown. That pre-trial conference focussed on the fact that the defence failed to file transcripts of the many appearances since September 28, 2010. The Court and the Crown viewed these transcripts as fundamental to the delay application and the defence acquiesced in that view.

[4] Mr. Bacchus inquired and determined that the transcripts could be ready in time for the trial, however it was apparent that the trial proper was in jeopardy. On February 6th Mr. Bacchus wrote to the court advising that the "audio recordings" would not be ready until Friday, February 8, 2013 "at the earliest". He further

advised that they could not be transcribed prior to Monday, February 11, 2013 that being the first day of the trial proper.

[5] Mr. Bacchus suggested scheduling another pre-trial "so that we may discuss our options". A telephone conference was held on February 11th at 3:00 p.m. Mr. Bacchus advised that the transcripts were available and would be forwarded to the Court and the Crown immediately. The Court determined that the trial would have to be adjourned but insisted the delay application go ahead that week. In order to allow the Court to prepare, and the Crown to review the transcript and file a brief, the delay application was scheduled for Friday, February 15th. The delay application proceeded on February 15th.

[6] Section11(b) of the *Charter* provides that "any person charged with an offence has the right to be tried within a reasonable time".

[7] The issue of unreasonable delay was considered in *R. v. Askov*, (1990) 2 S.C.R. 1199 wherein Wilson, J. framed the issue as follows:

> I agree with the position taken by Lamer J. that s. 11(b) explicitly focuses upon the individual interests of liberty and security of the person. Like other specific guarantees provided by s. 11, this paragraph is primarily concerned with the fundamental justice guaranteed by s. 7 of the *Charter*. There could be no greater frustration imaginable for an innocent person charged with an offence than to be denied an opportunity of demonstrating their innocence for an unconscionable time as a result of unreasonable delays in their trial. The time awaiting trial must be exquisite agony for accused persons and their immediate family. It is a fundamental precept of our criminal law that every individual is presumed to be innocent until proven guilty. It follows that on the same fundamental level of importance, all accused persons, each one of whom is presumed to be innocent, should be given an opportunity to defend themselves against the charges they face and to have their name cleared and reputation re-established at the earliest possible time.

[8] The starting point in the *Askov* analysis is to look at the length of the delay, in this case approximately 30 months. The Supreme Court of Canada stated "it is clear that the longer the delay, the more difficult it should be for a court to excuse it" and further that "very lengthy delays may be such that they cannot be justified for any reason".

[9] The Court directed that delay must be broken down into 3 categories:

1. Delays attributable to the Crown

2. Systemic or institutional delays

3. Delays attributable to the accused

Before I start this process I want to make it clear that I do not view this case as complex. The fact that the complainant is very young does not make it complex. The *Criminal Code* provides many tools and procedures to assist the Crown in prosecuting these types of cases. This was essentially a 3 witness case concerning a singular allegation. There is nothing about this case that calls for extended time requirements or unusual resources. It was a "simple case". (*Askov, supra.,* para 86)

[10] Delays attributable to the Crown will weigh in favour of the accused under the *Askov* criteria. *Askov* directs that "the question of delays caused by systemic or institutional limitations should also be discussed under the heading of delays attributable to the Crown". The Court further stated that "the right guaranteed by section 11(b) is of such fundamental importance to the individual and of such significance to the community as a whole that the lack of institutional resources cannot be employed to justify a continuing unreasonable postponement of trials".

[11] The Supreme Court of Canada in *Askov* directs that in analysing systemic delays I must consider the community; urban and rural; Province to Province; climate and terrain; and the like. There is nothing about this case heard in Halifax that justified extending the reasonableness of the delay. Every day cases much more complicated than this get to trial in a time frame that respects section 11(b). Fundamental to these 2 factors is that "it is the Crown which is responsible for the provision of facilities and staff to see that accused persons are tried in a reasonable time".

[12] Delay attributable to the accused must be analysed with reference to the Crown's onus. Wilson, J. in *Askov* discussed this factor as follows:

> Nonetheless, there is a societal interest in preventing an accused from using the guarantee as a means of escaping trial. It should be emphasized that an inquiry into the actions of the accused should be restricted to discovering those situations

> where either the accused's acts directly caused the delay (as in *Conway,* supra.), or the acts of the accused are shown to be a deliberate and calculated tactic employed to delay the trial. These direct acts on the part of the accused, such as seeking an adjournment to retain new counsel, must of course be distinguished from those situations where the delay was caused by factors beyond the control of the accused, or a situation where the accused did nothing to prevent a delay caused by the Crown.
>
> In addition, since the protection of the right of the individual is the primary aim of s. 11(*b*), the burden of proving that the direct acts of the accused caused the delay must fall upon the Crown. This would be true except in those cases where the effects of the accused's action are so clear and readily apparent that the intent of the accused to cause a delay is the inference that must be drawn from the record of his or her actions.

This is not one of those cases where that inference can be drawn. I see nothing in the record to suggest that Mr. Kazi used delay to avoid facing trial. I am of the view that he was taken along for the ride and that the delay is primarily institutional and beyond the control of Mr. Kazi.

[13] Waiver was considered as part of the *Askov* analysis, and revisited in the Morin decision. Waiver is a factor that I must consider as part of delays attributable to the accused. Any waiver of a *Charter* right must be "clear and unequivocal". *Askov* describes waiver in the following language:

> Failure to assert the right would be insufficient in itself to impugn the motives of the accused, as might be the case with regard to other s. 11 rights. Rather there must be something in the conduct of the accused that is sufficient to give rise to an inference that the accused has understood that he or she had a s. 11(b) guarantee, understood its nature and has waived the right provided by that guarantee. Although no particular magical incantation of words is required to waive a right, nevertheless the waiver must be expressed in some manner. Silence or lack of objection cannot constitute a lawful waiver.

I see nothing on the record to support waiver on the part of Mr. Kazi.

[14] Prejudice to an accused is also part of the *Askov* analysis. The starting point is that it should be inferred that a very long and unreasonable delay has prejudiced the accused. Degree of delay can lead to that inference being "irrebuttable".

Nonetheless the Crown has the option to demonstrate that the accused has not suffered prejudice, which was done in cross-examining Mr. Kazi on February 15th.

[15] This brings us to the question "how long is too long?". *Askov* addressed this question as follows:

> The question must be answered in light of the particular facts of each case. There can be no certain standard of a fixed time which will be applicable in every region of the country. Nonetheless, an inquiry into what is reasonable in any region should not be taken in isolation and must, of necessity, involve a comparison with other jurisdictions. Consideration must be given to the geography, the population and the material resources of the province and district. The comparison of similar and thus comparable districts must always be made with the better districts and not with the worst. ...

That somewhat mathematical approach has been altered by the Supreme Court of Canada in subsequent cases such as *Morin* and *Godin*. The focus has moved away from a mathematical fault based analysis to a more contextualized approach.

[16] I have been provided with a record that indicates approximately 10 appearances that related to advancing the case. I have not considered appearances related to variation of bail conditions, the status of defence counsel, or for focus hearings.

[17] Mr. Kazi's information was sworn on September 14, 2010. It required him to appear in Provincial Court on September 28, 2010. I take this as the starting point. The two week summons is entirely acceptable. On September 28, 2010 election was adjourned at the request of the defence. Mr. Bacchus stated he was waiting for a "tape". He was offered November 8, 2010 but required November 15, 2010. I see nothing untoward about this 6-7 week delay. Disclosure often takes time and counsel have schedules to respect. The record does not disclose whether Mr. Kazi was present on September 28, 2010.

[18] On November 15, 2010 Mr. Kazi elected trial by Supreme Court Judge and a preliminary inquiry was scheduled for June 21, 2011. This represents a delay of 7 months. I find this 7 month wait to be reasonable. The process was "on track".

[19] On June 20, 2011, the day before the preliminary inquiry, Mr. Bacchus requested an adjournment. The Crown consented. Mr. Kazi was not present. The following exchange took place:

> **MR. BACCHUS:** Yes, Your Honour. Appearing for Mr. Kazi, who's not present today. This matter was placed on the docket so I could ask for an adjournment of tomorrow's Preliminary Inquiry. I understand My Friend has no objection to the adjournment based on the last information I had, which was that there was court time available on July 13th and 14th.
>
> **THE COURT:** Right.
>
> **MS. COGSWELL:** That's correct, Your Honour. This is a matter that involves an eight-year-old complainant. And tomorrow is actually her final trip for the school year, and rather than have her wait around the courthouse, I spoke with her parents, and we certainly agree that it would be much better to have a definite date.
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> **THE COURT:** July 13th at – or it could be the 14th, whichever you prefer.
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> **MR. BACCHUS:** I'd prefer the –
>
> **THE COURT:** The 13th?
>
> **MR. BACCHUS:** – 13th, Your Honour, yes.
>
> **THE COURT:** 1:30 on the 13th.
>
> **MS. COGSWELL:** Fine with the Crown, Your Honour.

[20] I do not have a transcript for July 13, 2011. The next transcript is for July 18, 2011 and it explains the events of July 13th. Ms. Cogswell offered the following remarks:

> **MS. COGSWELL:** That's correct, Your Honour. Your Honour will no doubt recall that this matter was docketed for July 13th for the purposes of a Preliminary Inquiry, and Your Honour wasn't available that day. Judge Williams conducted a trial that day that went to five o'clock. As a result of that, the matter wasn't heard.

> It should also be noted, Your Honour, that a disclosure issue came up with respect to the seven-year-old complainant that the Crown requested a further statement to be taken. As a result of that, the matter likely would have been adjourned, at least in part, in any event. But we were unable to call any evidence given the trial that took place on the 13th.
>
> So we're here today looking for a further Preliminary Inquiry date. This matter has been outstanding for some time. I certainly appreciate the fact that this Court is very busy and that Your Honour has vacation coming up. I was going to beg the Court's indulgence and see if there was a chance that we could get days that there was no court sitting, that Your Honour is on vacation, and if we could have another judge come in to hear the matter to try expedite it.

[21] The task on July 18, 2011 was to set a new preliminary inquiry date. The Court offered August 31, 2011 but the defence did not accept because of Mr. Bacchus' schedule. The Court then offered November 23, 2011 but the defence did not accept because of Mr. Bacchus' schedule. The case was adjourned until September 8, 2011 to allow counsel and the Court to explore a new preliminary inquiry date. The November 23, 2011 date was tentatively pencilled in. On September 8, 2011 the November 23, 2011 date was released because of Mr. Bacchus' schedule. A new preliminary inquiry was set for February 23, 2012.

[22] On February 23, 2012 the preliminary inquiry started with Mr. Wright prosecuting who advised he took over the file and met the complainant the day before. The record of February 23, 2012 satisfies me that the Crown was not prepared.

[23] The Provincial Court Judge objected to the Crown's approach and described that approach as "blindsiding" and made the following remarks:

> **THE COURT:** I can't –I'm not going to – I'm not going to guarantee anything like that, given that this is the very first moment I've been put on notice of this.
>
> **MR. WRIGHT:** I understand.
>
> **THE COURT:** I mean, really, counsel know better than that. When you're going to be into something that's a little bit different than what we're customarily dealing with – I mean, there's – I don't think I can remember any case where a Crown has asked me, "Well, we're going to put the witness on the stand. She's

> going to tell me her age and name, and then we're just going to play a tape for an hour and 45 minutes and have her say that, 'Yeah, that's me and that's what I said.'"
>
> **MR. WRIGHT:** Okay.
>
> **THE COURT:** I've never been asked to do that before. So that's not...
>
> **MR. WRIGHT:** And I apologize for it. I do.
>
> **THE COURT:** That's not – that's not usually what we use statements for.
>
> **MR. WRIGHT:** Sure.

[24] In any case the complainant gave evidence which was ultimately sufficient to get a committal. However after direct the Crown indicated that they were "going to attempt to play the video to refresh...". Mr. Bacchus objected for reasons that the Provincial Court Judge could not understand as presented. There was no necessity to refresh the child's memory given that her evidence proved sufficient for committal.

[25] This futile situation left the Provincial Court Judge to enter on a *voir dire* which required further adjourning the preliminary inquiry to April 24, 2012. On April 24, 2012 the Crown decided to forego the *voir dire* and to rely on the complainant's February 23, 2012 evidence. Cross-examination was completed and Mr. Kazi was committed to trial.

[26] A pre-trial conference was held on June 1, 2012. The February 2013 trial dates were scheduled on June 7, 2012.

[27] I see nothing unreasonable about the period between September 14, 2010 and June 20, 2011; a period of 9 months. While ideally one would prefer less delay between arraignment and preliminary inquiry, in this city that period is reasonable. I see nothing unreasonable about the period between April 24, 2012 and February 15, 2013; a period of approximately 9 months. Once again while one would prefer less delay between committal and trial, in this Court that period is considered reasonable. If all had unfolded without incident Mr. Kazi would have gotten to

trial in 18 months and that certainly would have been acceptable as it would not offend the *Charter*.

[28] This case did not unfold without incident. Eleven months were lost between June 2011 and April 2012. The cause of this delay is primarily institutional. Mr. Bacchus "double booking"of June 21, 2011 and Mr. Wright's lack of preparedness on February 23, 2012 contributed to some of the overall delay. However, the task at hand is not to lay blame at anyones feet but to determine if Mr. Kazi's section 11(b) rights were infringed, and if so, what is the appropriate remedy.

[29] In the *Morin* case Sopinka J. stated that the following factors are to be considered in a section 11(b) analysis:

1. the length of the delay;
2. waiver of time periods;
3. the reasons for the delay, including
   (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.

Length of delay:

[30] All agree the delay here is 30 months. In *Morin* the Court stated "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 the issue of reasonableness of the period by other factors such as prejudice". I am satisfied that 30 months to get this case to trial amounts to a *prima facie* case of unreasonable delay and therefore further inquiry is required.

Waiver:

[31] The Crown argues that Mr. Kazi's consent to and confirmation of the various court dates give rise to an inference of waiver. The Crown further argues

that requests for adjournment and lack of availability constitute express waiver. Cory J. in *Askov* stated as follows:

> ...there must be something in the conduct of the accused that is sufficient to give rise to an inference that the accused has understood that he or she had a s. 11(b) guarantee, understood its nature and has waived the right provided by that guarantee.

[32] On June 20, 2011 the preliminary inquiry was adjourned for two reasons. One, Mr. Bacchus and Mr. Kazi were double booked on an alcohol related matter. Two, additional disclosure emerged in the form of a second statement from the complainant. The Crown consented to the adjournment and acknowledged that the new disclosure would necessitate an adjournment of the June 21, 2011 preliminary. The Crown stated to the Court at the July 18, 2011 appearance:

> It should also be noted, Your Honour, that a disclosure issue came up with respect to the seven-year-old complainant that the Crown requested a further statement be taken. As a result of that, the matter likely would have been adjourned, at least in part, in any event. But we were unable to call any evidence given the trial that took place on the 13th.

The fact that a new preliminary inquiry date could be had in 3 ½ weeks removes any concern that Mr. Kazi is exercising waiver, express or inferred.

[33] On July 13, 2011 the Court ran out of time. This was not something within the control of counsel or Mr. Kazi. Once the July 13, 2011 date was gone it would be reasonable to expect that the case would be back into the 9 month queue save for a few slots here and there. The two slots available were August 31, 2011 and November 23, 2011 and Mr. Bacchus had already booked those dates. It is a natural conclusion that if the Court is setting matters 10 months out that counsel's schedule would be booked 10 months out. This reality is beyond Mr. Kazi's control. As stated in *Morin*:

> Waiver requires advertence to the act of release rather than mere inadvertence. If the mind of the accused or his or her counsel is not turned to the issue of waiver and is not aware of what his or her conduct signifies, then this conduct does not constitute waiver. Such conduct may be taken into account under the factor "actions of the accused" but it is not waiver. As I stated in *Smith, supra*, which was adopted in *Askov, supra*, consent to a trial date can give rise to an inference of

> waiver. This will not be so if consent to a date amounts to mere acquiescence in the inevitable.

I conclude that Mr. Kazi did not exercise waiver throughout the process of getting to trial .

The Reasons for the Delay

a) Inherent Time Requirement:

[34] There is nothing about this case that calls for an extended time frame. The fact that the complainant was 7 years old does not require extended time. In fact once on the stand she was perfectly capable of giving evidence sufficient to obtain committal. There was nothing complex about this prosecution.

b) Actions of the Accused:

[35] Included under this heading are all actions taken by the accused which have caused delay. Mr. Kazi has not advanced any applications before this one as was the case in *Conway.* I reference here the comments I made under waiver. I find that this is a case where Mr. Kazi did not contribute to the delay. I conclude that he had no choice but to go along for the ride.

c) Actions of the Crown:

[36] There was late disclosure from the complainant that could have caused some delay but the fact the July 13, 2011 was available ameliorated any impact it might have on delay.

[37] When the preliminary started on February 24, 2012 it did not finish because the Crown were attempting to enter the child's statement which required a *voir dire* and an adjournment. And when the case resumed on April 24, 2012 a committal was held without the use of the statement. These actions resulted in only a 2 month delay. This is the only action of the Crown that I find contributed to delay.

d) Limits on Institutional Resources:

[38] As stated in *Morin* institutional delay is the most common source of delay and the most difficult to reconcile with the dictates of section 11(b) of the *Charter*. The same applies to this case. Sopinka J. stated as follows in *Morin*:

> How are we to reconcile the demand that trials are to be held within a reasonable time in the imperfect world of scarce resources? While account must be taken of the fact that the state does not have unlimited funds and other government programs compete for the available resources, this consideration cannot be used to render s. 11(*b*) meaningless. The court cannot simply accede to the government's allocation of resources and tailor the period of permissible delay accordingly. The weight to be given to resource limitations must be assessed in light of the fact that the government had a constitutional obligation to commit sufficient resources to prevent unreasonable delay which distinguishes this obligation from many others that compete for funds with the administration of justice.

[39] I know the pressures that the Provincial Court in Halifax faces every day and I would never want my remarks to be viewed as criticism. However, when a case alleging sexual abuse of a minor gets bumped there should be a mechanism in place to identify it and to remove it from the queue. It would have to be a mechanism that could accommodate counsels busy schedule. This type of mechanism is especially needed for these highly stigmatized types of prosecution.

[40] Mr. Kazi enjoys the presumption of innocence. Society nonetheless recoils when they hear or read about these accused persons. As a result families are lost, jobs are terminated, the internet exposes them, marriages fail and lives are ruined. It is not acceptable to have these things happen due to limitations on institutional resources. Our Courts have developed separate tracks for mentally ill offenders and domestic violence situations. Accused persons in Mr. Kazi's position should not have to suffer the isolation and indignity for any longer than necessary pre-conviction.

e) Other Reasons for the Delay:

[41] I do not see any in this case.

Prejudice to Accused:

[42] Mr. Kazi gave evidence of the impact of this case on his life. I accept his evidence that the following consequences flowed from being charged with molesting a 7 year old child:

> He lost his career as a school teacher
> He can only see his children supervised
> He has lost his marriage
> He has lost his recording business
> Lost relationships
> Death threats and confrontations
> Personal physical and mental health issues

I do not accept that prosecutions for impaired driving attract these kinds of consequences.

[43] I find immense personal prejudice to Mr. Kazi as a result of these charges and that such prejudice have continued over the past 30 months. I also conclude that the delay prejudices Mr. Kazi's right to a fair trial and his ability to make full answer and defence. This complainant has lived with this prosecution for 30 months. It's impact has no doubt been part of her life every day; she is young and vulnerable. There is a danger that her family and community are striving to support her and in doing so influencing her recollection of what happened. It is unlikely that she is sufficiently mature to recognize that she may be drifting away from her initial report. She obviously made additional disclosures just before the preliminary inquiry that were sufficient enough to require taking a second statement. I find that delay has caused real prejudice to Mr. Kazi, personally and legally.

[44] McLachlin J. in *Morin* offered the following comments respecting striking a balance between societal and individual rights in a section 11(b) analysis:

> If this threshold or *prima facie* case is made out, the court must proceed to a closer consideration of the right of the accused to a trial within a reasonable time, and the question of whether it outweighs the conflicting interest of society in bringing a person charged with a criminal offence to trial. The question is whether, on the facts of the particular case, the interest of society in requiring the accused person to stand trial is outweighed by the injury to the accused's right and detriment to the administration of justice which a trial at a later date would inflict.

> The interest of society in bringing those charged with criminal offences to trial is of constant importance. The interests of the accused, on the other hand (and the correlative negative impact of delay on the administration of justice) varies with circumstances. It is usually measured by the fourth factor - prejudice to the accused's interests in security and a fair trial. It is the minimization of this prejudice which has been held to be the main purpose of the right under s. 11(b) of the *Canadian Charter of Rights and Freedoms* to be tried within a reasonable time: *R v. Conway*, [1989] 1 S.C.R. 1659, at p. 1672.

After a full consideration of the principles in *Askov,* and the factors set forth in *Morin*, I am satisfied that Mr. Kazi's section 11(b) rights have been infringed.

Section 24(1) Relief:

[45] Mr. Kazi seeks a remedy pursuant to section 24(1) of the *Charter*; specifically a stay of these 2 charges. Section 24(1) states that "anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a Court of competent jurisdiction to obtain such remedy as the Court considers appropriate and just in the circumstances". This Court is a Court of competent jurisdiction. When a person can demonstrate that one of his or her *Charter* rights have been infringed, access to a court of competent jurisdiction to seek a remedy is essential for the vindication of a constitutional wrong. As stated in *Nelles* "to create a right without a remedy is antiethical to one of the purposes of the *Charter*".

[46] In *R. v. Steele,* 2012 ONCA 383, the Ontario Court of Appeal confirmed that a stay of proceedings is the minimal remedy for a breach of the right to trial within a reasonable time. It is not a remedy of last resort reserved for the clearest of cases. That Court stated as follows:

> The proper test was identified by this court in Thomson, at para. 25, by reference to McLachlin J.'s concurring reasons in *Morin* at p. 810: "In the final analysis the judge, before staying charges, must be satisfied that the intrest of the accused and society in a prompt trial outweighs the interest of society in bringing the accused to trial." As Arbour J.A. pointed out in *R. v. Bennett* (1991), 3 O.R. (3d) 193 (C.A.) at 206, at common law and under the *Charter*, outside the s. 11(b) context a stay of proceedings is a discretionary remedy to be granted sparingly. But for a s. 11(b) violation a stay of proceedings is the minimum remedy. As Lamer J. explained in *R. v. Rahey*, [1987] 1 S.C.R. 588 at 614: "After the passage of an

> unreasonable period of time, no trial, not even the fairest possible trial, is permissible."

I conclude that Mr. Kazi has met this test.

[47] Consequently I stay the two charges against him and he is released from his bail conditions.

J.