

(i)  
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ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

RULING

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Dealing with the prejudice aspect of it, there was no evidence before the court. It was just inferred by the justice of the peace that because the matter had taken such a long time to be heard that there was possibly prejudice. As pointed out by Justice Doherty maybe that prejudice is not real. However, in looking at the entire time period, it is aggravating as far as I am concerned and as pointed out by justice of the peace Brown, it probably should not have taken place. There is an obligation upon peace officers to have their notes ready knowing full well, that pursuant to *Regina v. Stinchcombe*, there is full disclosure necessary. In one case, the officers did not have anything in his notes with regard to this matter, so, that should have been a non-issue, and the other officer, I do not know why it took so long for him to finally get his notes and indicated what testing took place.

So that way, assuming everybody was in agreement, took from August until February to then be in a position to set a trial date, which is roughly some five months or so. I am not going to attribute - there was attribution made by the justice of the peace to that delay, but I am going to consider that the clock was ready to go on the 14<sup>th</sup> day of February. But the delay, from the 14<sup>th</sup> day of February to September is unreasonable for this type of offence.

Even though there were some complications as

5 pointed out by Ms. O'Marra, with regard to three  
accused and Mr. Fournier accepting two of the dates  
and unable to fit in the third one, there was  
absolutely a necessity that the matter be heard in  
a timely fashion at that point and to wait  
approximately seven months to - from February to  
September was beyond the time periods that are  
acceptable in these courts, nor should be  
acceptable in these courts. And the justice of the  
10 peace stated, reading from page 48, line 27, I do  
not fault really the defence in any way for this.  
They were - indicated they were ready to go. I  
cannot really fault any of the staff in the Crown's  
department for this. It was a fact that could not  
15 be avoided that the courtroom was not available,  
period, which is an institutional problem.

20 So, the period of time from February the 14<sup>th</sup> to the  
September 6<sup>th</sup> dates, which would have been the trial  
date conceivably, I again attribute to the  
prosecution and then of course, September,  
September 16 - and he goes on to indicate that he  
had to read the material.

25 So, consequently, in connection with this matter  
and appreciating Ms. O'Marra's argument and the  
fact that she is indicating as well, that the delay  
is border line, I find that in this jurisdiction,  
in the City of Hamilton, this is beyond what is  
30 acceptable in my opinion and that there has been  
delay and as a result, I cannot find that the  
justice of the peace erred in his ruling in

connection with this matter. Appeal dismissed.

MS. O'MARRA: Thank you Your Honour and I thank  
my...

THE COURT: Thank you.

MS. O'MARRA: ...friend and I believe Mr. Andres  
would like to address the court.

...WHEREUPON THIS MATTER WAS CONCLUDED

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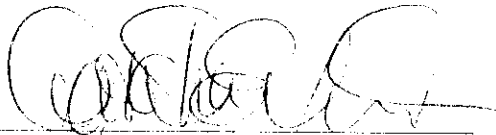
5.  
Certification

**FORM 2**  
**Certificate of Transcript**  
**Evidence Act, Subsection 5(2)**

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I, Natasha Engineer certify that  
this document is a true and accurate transcription of the  
recording of Her Majesty The Queen v. Joseph Piercey in  
10 the Ontario Court of Justice held at 45 Main St. East,  
Hamilton, Ontario taken from Recording No. 4/11-Court 208-  
14/2008 which has been certified in Form 1.

Feb 21/08

(Date)



(Signature of authorized person)

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