

Information itself has to satisfy the provisions of Section 581. There - an issue is raised in the cases as to whether, regardless of what's in the Information, the Crown may provide particulars and there are circumstances in which particulars can be ordered. But, if the Information itself does not meet these basic requirements of Section 581, then there is no alternative but to quash the Information. That statement is actually found on page 137 of the judgment, where the Court said:

"With great hesitation, I've come to the conclusion that Parliament has not given the trial judge any other alternative but to quash the Information, irrespective of whether or not particulars are offered and - or whether or not the prosecution moves to amend under Section 732."

So that's the - that's that case.

The Supreme Court of Canada recently considered these subsections in a case, which is called G.B., A.B. and C.S. versus the Queen, and I have that case. This is a case, Your Honour, from Saskatchewan, it was an appeal from the Saskatchewan Court of Appeal, and it involved a charge - charges of sexual assault at a school in Sheho, Sheho Elementary School in Saskatchewan. In that case, the Information provided on or between the 2nd of December, 1985, I'm reading from page 203 of the judgment:

"On or between the 2nd day of December, 1985 and the 20th day of December, 1985, at Sheho, in the

Province of Saskatchewan..."

Then went on to the rest of it, being a young person and so on. It - so it alleged a sexual assault during a period of time in December of 1985. After the evidence was called, there was evidence that the assault in fact occurred in November, and the Supreme Court of Canada considered issues related to that problem. The Supreme Court reviewed earlier decisions concerned with now Section 581 of the Code and made a statement, at page 212, which indicates that - what an Information should require. They say:

"It is apparent from these cases that what constitutes reasonable or adequate information with respect to the act or omission to be proven against the accused will, of necessity, vary from case to case. The factual matters which underlie some offences permit greater descriptive precision than in the case of other offences. Accordingly, a significant factor in any assessment of the reasonableness of the information furnished is the nature and legal character of the offence charged. It's also apparent, however, that in general an Information or indictment will not be quashed just because the exact time of the offence is not specified. Rather the matter will continue on to trial on the merits. While it is obviously important to provide an accused with sufficient information to enable him or her to identify the transaction and prepare a defence, particularity as to the exact time of the alleged offence is not, in the usual course, necessary for this purpose. It goes without saying, of course, that there may be cases where it is."

Now, in this particular case we were talking about the Information said December, the offence occurred in November, so there was a relatively minor difference between the dates on the

Information and the evidence that was proved in court.

I have one further case, Your Honour, and this is re: Regina and R.I.C., a case from the Ontario Court of Appeal in 1986. And that case, again, was a sexual assault case. The Information provided that R.I.C. of the address was given Niagra Falls, between the 31st of May and December the 15th, 1984 at the City of Niagra Falls in the said judicial district did unlawfully sexually assault P.M.C. This case concerned a period of about seven months, May to December of 1984, and the same application was made in this case as is being made this morning on behalf of the accused. The court in fact decided that that was not - the majority decided that the Information was not too uncertain and the Information was not quashed. However, there was a dissenting judgment, whereby Goodman, Judge Goodman, and that's at page 407 of the judgment. He said:

"In the case at bar the date of the offence alleged in the Information is indefinite. It is alleged to have taken place at some indefinite time or times during a six and a half month period. The place of the alleged offence is vague and indefinite, stated to have been committed in a large municipality. The Information does not specify any house, street or other area within the municipality as the place where the offence is alleged to have been committed. The offence is described only as a sexual assault. A sexual assault can be committed in a multitude of ways. The Information makes only a general allegation in this regard. The only specific allegation in the Information is that of the identity of the

victim. It is trite law that every accused is presumed to be innocent. Assuming that the accused in the present case is innocent, I do not see how, from the contents of the Information, he could possibly have any idea as to the acts or omissions upon which the Crown relies to prove its case, or how he could identify the transaction referred to."

Your Honour, in the present case, the first three counts of the Information simply allege that each of the accused, between the 1st of January, 1983 and December 31st, 1989 at Saskatoon in the Province of Saskatchewan did commit a sexual assault and then - each of the first three counts with respect to the three different victims. I would submit, Your Honour, that this is just too uncertain. It's a long period of time, there's no indication of what kind of sexual assault is involved, it just covers this whole time span of seven years.

I would point out that there are further charges involve, well certainly the last three counts involve only some of the accused. The Information alleges a sexual assault. Now I mean a sexual assault is a specific incident that occurs on a particular date. Now, I appreciate that it's not necessary to prove that the assault happened on a particular date, but I would submit that it is at least necessary to give some indication to the accused of when this incident occurred, in order that an accused person can defend themselves.

My impression from the Information, which is all the information that I have, is that the Crown has made no effort to identify the offence in these counts in such a way that the accused would know what it is that is being referred to. I have no idea, from this, when the offences occurred or what the offence was, what occurred.

THE COURT: Well, in the last three counts, you certainly know what the offence was, it was having sexual intercourse.

MR. MULLORD: Yes, Your Honour, I agree, that is more particular. But having sexual intercourse is something which takes an hour. This is a particular incident, it must have occurred on a particular date and yet we have to -

THE COURT: No, but I'm saying time - you can't complain about - you can complain about time but not the nature of the offence alleged.

MR. MULLORD: Yes, Your Honour, I accept that, and my submission is primarily, this morning I'm primarily concerned with the time. I think that this is just too large a period of time. I'm not aware of any case where a period of seven years, that's a very long period of time, and I would submit that that is - it's too vague for these accused to defend themselves on these charges. Those are my comments, Your Honour.

MR. KERGOAT: Just for the record, I join in the same application. There - I have a citation with respect to timing, not the case itself, but the decision is R. versus Volpi and the citation is (1987), 34 C.C.C. (3d) at page -

THE COURT: R. versus what?

MR. KERGOAT: Volpi, V-o-l-p-i.

THE COURT: You don't have photocopies?

MR. KERGOAT: I don't have a photocopy of it but it was only the issue of the timing that came up in your comments. And that decision -

MR. MIAZGA: Page number there?

MR. KERGOAT: I'm sorry?

MR. MIAZGA: Page number, you didn't give us a page.

MR. KERGOAT: Oh, at page one, an Ontario -

THE COURT: (1987) -

MR. KERGOAT: 34 C.C.C. (3d) at page 1, Ontario Court of Appeal, leave to appeal refused, Supreme Court of Canada. And it had referred to subsection 11, as my learned friend had, which refers under Section 601(11) to the preliminary hearing issue. And the court in that case stated that that subsection (11) is ambiguous as to whether an accused may move to quash an Information as failing to disclose sufficient detail of the circumstances of the offence, on arraignment and prior to making his election as to the

mode of trial. The ambiguity must be resolved in favour of the accused, since a properly worded Information is necessary to enable an accused to freely exercise his right of election. So this even goes back prior to the accused's election. And the summary is that the accused may bring an application to quash prior to being required to elect. That is the case summary I read, but not the case decision itself. But for your reference, if that is an issue.

THE COURT: Well, I take it that the Crown's position is that it is not an issue.

MR. KERGOAT: Thank you.

THE COURT: Do I correctly take it, Mr. Miazga, that your position that there is no issue as with respect to the right of the accused to be making these applications at this stage?

MR. MIAZGA: No, I'm not saying they have to have any leave. I think the Code says, you know, they can do that if they want to and I'm not arguing about that.

THE COURT: Alright. So that - this last case is of no significance then, in this particular - in these applications?

MR. MIAZGA: In terms of whether or not they're able to make the application, no, I'm not suggesting they can't make the application at this time. Is that the Defence arguments then?

MR. KERGOAT: Thank you.

MR. MIAZGA: I guess the main point the Crown wants to make, which is emphasized in these cases and repeatedly quoted in these cases, which initially comes from Sal Hany on Criminal Procedure, and I don't have the exact words in front of me. But it's essentially that the sufficiency of an Information has to be judged in each separate case individually. There's no rule that applies to every single type of prosecution, every single case that says this is not going to be a good Information.

It may well be, if we were talking about a charge of fraud or charges of theft or charges of bad cheques, where there's a paper trail that can be tracked down years later that the Defence would be completely right, because the Crown hasn't said that on such and such a day, even six or seven years ago, you did a certain act. If I was in the position, as a Crown representative, to do that I would certainly do so. This case is obviously not something as precise as fraud or false pretences or theft, where there often is documentary evidence existent for years that enables both the Crown and Defence to know exactly the days in question. We're talking about perhaps one of the most vaguest types of cases that can be brought before the Court.



THE COURT: One of the most what?

MR. MIAZGA: Vaguest types of cases in terms of time, and that's a case involving a child witness who's trying to recount events that happened some five, six, seven years ago.

THE COURT: Alright. What age children? I don't know this.

MR. MIAZGA: The children at this particular time are, the two girls are twins, they're nine years of age.

THE COURT: At this - now.

MR. MIAZGA: Today, yes. And the boy is twelve. So obviously one -

THE COURT: 1983 is -

MR. MIAZGA: Eight years ago.

THE COURT: Eight years ago. So we're talking about children that may have been one or two to three or four years of age.

MR. MULLORD: They were born in March, 1982, so they were less than a year old on the 1st of January, 1983, two of the children.

MR. MIAZGA: So I'm simply - the point simply is that these events go back a long time. Obviously the Crown isn't alleging that there was incidents every single day throughout that whole period of time, but simply took the dates, the maximum earliest date and the maximum outside date as to when these offences could

have taken place. And that's the reason those dates were picked.

As Mr. Mullord pointed out, the two girls would have been very young at that time and, quite frankly, probably are not in a position to really say much happened to them in 1983. But again, that's simply an outside date as to when - the children would have been young enough. The boy at that time would be four years of age. A child of four, I think is quite capable of having some memory as to what took place. The children, in December of 1989, essentially were - the boy was removed from a foster home and placed in the - placed with his current care, the girls removed sometime later. And again there is - there may well be suggestions of incidents that could have taken place up till that time.

Again, it's a matter of difficulty in establishing specific dates. I think it goes without saying that, anytime you're dealing with a child witness, establishment of a specific date is an impossibility. If the Court imposes that type of obligation upon the Crown, it effectively would stop prosecutions for these type of offences. And that type of argument is alluded to in the Supreme Court decision that was given to the Court this morning by Mr. Mullord.