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June 25, 2003

Hand Delivered

Mr. John Krompkamp
Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N5

Dear Mr. Krompkamp:

Re: Regina v. Stewart (C34060) and Mallory (C34059)
Case Management

These appeals are related to the appeals in *R. v. Sauve and Trudel* (heard in the first week of February of this year and presently under reserve by a panel of the Court composed of Justices Catzman, Rosenberg and Borins). These two Appellants were severed from the original trial. They were tried together between 1997 and February, 2001. They have appealed their convictions. I am writing to update the court respecting certain matters involving the status of this matter.

The Appellants are represented by James Lockyer (for Stewart) and Marlye Edwardh and Joanne McLean (for Mallory). Mr. Lockyer has been on the record since April, 2001. I am not certain when Ms. Edwardh and Ms. McLean became involved, though it was some time ago. I have carriage of the appeal on behalf of the Crown.

The transcripts of the trial (199 volumes) have been available and in hand since November, 2002. The reporters indicate that most of the other proceedings were transcribed for "dailies" and so are available with reasonable dispatch.

In response to my inquiries concerning the progress of the appeal, counsel for the Appellants have indicated the following:

1. They are not, at this time, aware of any fresh evidence;
2. While the transcripts of the trial proceedings have been completed there are some portions of the transcript of the pre-trial proceedings (not normally

transcribed pursuant to the rules) that may be necessary to permit an assessment of the merit of, or presentation of, some grounds of appeal;

3. Counsel indicate that they have another pressing obligation already with this Court requiring them to give another case (*Regina v. Robert Baltovich*) priority over other cases, including this matter;
4. Counsel indicate that, given their existing court ordered obligation to prioritize the other appeal, and the volume of work outstanding on this matter, that the earliest they are prepared to commit to filing an Appellants' Factum is May 30, 2004.

This date is, obviously, well outside the periods prescribed by the rules and the Court's "Timely Hearing of Appeals" Practice Direction. It is longer than I as Crown counsel would have preferred. However, in light of the existing order for counsel to prioritize another appeal and the volume of work that remains outstanding it appears that a commitment to file by the end of May, 2004, is not unreasonable.

Given the distance of that date and the uncertainty of the exact contours of that the appeal (how many grounds will be pursued, just how complex will the appeal be) it is not realistic to begin considering a timeline for the Respondent's materials. I would note, however, that the Crown has not been the source of any appreciable delay in these proceedings. In *Sauve and Trudel* the Respondent filed its response (while dealing with a concurrent complex fresh evidence application) seven months after receiving the Appellants Factum and fresh evidence materials.

It is my understanding that Justice Doherty was case managing this matter. I do not know whether there had been any appearances or conference calls on this case. It is my position that if the date is acceptable to the Court, the May 30, 2004 deadline for the Appellants' Factum should be incorporated in an order or endorsement. This would provide at least some measure of certainty to the progress of this appeal. Should the court desire, counsel are, of course, prepared to attend by conference call or audience to address these questions.

I trust that this is satisfactory.

Yours very truly,



Scott C. Hutchison
Crown Counsel

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