

Submissions on Nature of Resolution Discussions

August 22

Minuk

- No overt mention that this resolution was negotiated
- “Mr. Wolson and I, as you have heard, conversed about the authorities we were going to file respectively and put them together s one booklet rather than submitting two (J62 at 1621, 1.8)
- “With that, my assessment of the law is, in the authorities provided, that the appropriate penalty in this particular case is a jail term, a period of incarceration” (J62 at 1628, 1.31)
- “It’s my submission to you that based on my reading of the caselaw, that the type of the sentence that your Honour should impose is a two year less a day jail term, to be served conditionally under certain conditions.” (J62 at 1629, 1.33 - 1630)
- “The conditions that I would ask Your Honour to impose and I do have a copy of them for you...” (J62 at 1630)
- “Now, I can tell you that I have provided a copy of this list to Mr. Wolson and with your Honour’s permission, I’ll provide it to the clerk, if your Honour wishes...” (J62 at 1631, 1.34 - 1632, 1.2)

Wolson

- “You have a position that my friend and I have – are advancing to you jointly, and one of the issues is that of his – a driver’s licence.” (J62 at 1668, 1.3)
- “If you were of the view that that range of sentence, as jointly recommended by Crown and defence, is an appropriate range then, of course, you would turn your attention to whether or not a conditional sentence would be appropriate...” (J62 at 1671, 1.20)
- “You would have before you a joint recommendation, in my view, that’s supported by the authorities” (J62 at 1673, line 31-32)
- “So, in my view, the courts have said, on joint recommendations articulated by experienced counsel, that if the sentence recommended is well within the range of the

accepted standard, and this is, that courts ought to give considerable attention to the recommendation of the lawyers....” (J62 at 1674, 1.3)

- “[re HZ status as police officer]... in our deliberations and our discussions that’s been taken into account in the submission that we have jointly recommended to you.” (J62 at 1675, 1.17-19)

Chief Judge Wyant

- “I recognize that this is a joint recommendation by counsel ...” (J62 at 1680, 1.30)

September 12

Minuk

On Nature of legal Duty

- “They do, however, cross or intersect with Your Honour’s exercise of discretion because on the reading of the cases dealing with joint submissions, the Court of Appeal has made it clear that the circumstances surrounding the case and the plea to distinguish one form of joint submission from another should be put forward to the court.” (J63 at 1708, 1.19)
- “So in that context to explain in a larger sense the exigent circumstances of the case, the obligations of the Crown and the requirements of Gardiner, Your Honour will now know as the Court of Appeal has said, counsel ought to tell the court why this is a circumstance different than another... so... you must ask yourself, did the Crown explain to me with the satisfaction that I’m required to have on the basis of the joint submission cases the circumstance of the case itself so as to distinguish this type of joint recommendation from one where two counsel simply stand up, an accused pleads guilty to an offence and a recommendation is made based on case law.” (J63 at 1709, 1.2-7)
- “The Court of Appeal also directs that the sentencing judge should be made aware of the exigencies and weaknesses of the case that are not tested by an accused who gives up his rights to trial” (J63 at 1703, 1.13)

The Sentence as the Subject of a Plea Bargain

- See passages above from August 22 re basis for conditional sentence submissions

The Charges as the Subject of a Plea Bargain

On whether charges stayed as part of negotiations

- “Those charges were stayed when the guilty plea was entered. They were stayed not because the accused pleaded guilty to dangerous driving, but because of the Crown’s obligations I described to you in my introductory remarks. That obligation is to have and to be able to present the court with legal proof.” (J63 at 1701 l.3)
- “In short, no evidence capable of meeting the required standards for prosecutions, a reasonable likelihood of conviction and all the moreso, no evidence resisting a Gardiner challenge was available to the Crown in respect of the offences of impaired driving and refusing the breathalyser.” (J63 at 1032, l.13)

The Dangerous Driving Charge

- “Notwithstanding this evidence, conviction at trial cannot be a certainty. The exigencies of this case are such that a guilty plea to a charge the accused faced would not have been anticipated by the Crown.”

“In this regard the Crown is very mindful that the accused, who at the time of the offence was a police officer offered to plead guilty to a very serious indictable offence and gave up his right to a preliminary inquiry and a trial on a matter fraught with issues more difficult for the prosecution than the defence.” (J63 at 1702, l.28)
- “This fact [the status of the accused as a police officer] will have to be considered in the specific context of this case which involves an individual who did occupy a special position, but one who the Crown recognized in making its recommendation gave up his rights to trial and pleaded guilty knowing the exigent circumstances of the case which did not favour the Crown that I’ve already explained.” (J63 at 1707, l.23)
- “At the same time the Crown is aware that the accused is represented by, by experienced counsel who would likely be aware, certainly of the problems with the case, including the effect of putting in a case which would be damaged as it related to the other significant charge, dangerous driving. And balancing all of those, when the accused came forward to say I will plead to this charge without the Crown having to put in the case run the risk of the negative effect of what is not there, that needs to be considered.” (J63 at 1713, l.29)