

**IN THE SUPREME COURT OF YUKON TERRITORY**

BETWEEN:

HER MAJESTY THE QUEEN

AND:

WAYNE JOSEPH VALIHORA

Leigh Gower

For the Crown

Wayne Valihora

On his own Behalf

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**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**

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[1] VEALE J. (Oral): Mr. Valihora is charged with two offences, one under s. 139(2), which has a maximum term of imprisonment of two years, and also an offence under s. 264.1(1), which has a maximum sentence of five years.

[2] He comes to court this morning applying for an adjournment of the case. This is the first notice that the Crown or the court has received of the adjournment application. The Crown has only one witness and is ready to proceed.

[3] Mr. Valihora indicates that he was convicted of an impaired driving charge and as a result has lost his licence and has been unable to earn the income necessary to retain counsel.

[4] Mr. Valihora did have counsel, Mr. Cozens, at the preliminary inquiry on April 16, 2002. Mr. Cozens advised the court on October 7, 2002, that he wished to be removed as the solicitor of record and he was so removed on October 15, 2002.

[5] Mr. Valihora was not present on that occasion but it is my understanding that he was aware of Mr. Cozens' application simply because he was not able to come up with the required retainer.

[6] This matter was commenced by an Information on December 17, 2001. The alleged offence dates back to November 26, 2001. On January 9, 2002, Mr. Valihora was granted an adjournment to get counsel. On January 23, 2002, it was indicated that Mr. Cozens would be retained. On February 6, 2002, the court directed Mr. Valihora, again, to get counsel, and Mr. Cozens was retained and the date of April 16, 2002 was fixed for the preliminary hearing.

[7] The trial date appears to have been set on May 14, 2002, and it was set for October 28, 2002. It did not proceed on that date because of other urgent matters that had to be dealt with and consequently it was set for today's date, November 15<sup>th</sup>.

[8] In exercising my discretion on the adjournment application I have to consider the seriousness of the charges.

[9] MR. GOWER: My Lord, may I just remind you that you mentioned under s. 139 the maximum penalty was two years. It is actually under s. 139(2) and the maximum penalty is 10 years.

[10] THE COURT: Sorry. Thank you, Mr. Gower, I stand corrected.

He is charged under s. 139(2) and the maximum term is 10 years.

[11] In any event, in exercising my discretion I have to consider the serious nature of the charges. The difficulty I have is that whatever date we set for an adjournment there is no assurance that Mr. Valihora is going to be able to retain counsel at that time. We would have to adjourn the matter until sometime in the spring to have some assurance that he would have counsel, and even then we would not know until the court date.

[12] I am, therefore, going to deny the adjournment application based on the fact that there has been a delay in Mr. Valihora advising the court of his situation. Crown is here with their witness, ready to proceed, so I am denying the adjournment application and we will proceed with the trial.

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VEALE J.