IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Barbara M. Hamilton
Madam Justice Jennifer A. Pfuetzner
Madam Justice Karen I. Simonsen

B E T W E E N :

LARRY PETER KLIPPENSTEIN	)	***L. P. Klippenstein***
	)	*on his own behalf*
	)	
(Applicant) Appellant	)	***C. R. Savage***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
HER MAJESTY THE QUEEN	)	*Decision pronounced:*
	)	***February 5, 2019***
	)	
(Respondent) Respondent	)	*Written reasons:*
	)	***February 11, 2019***

On appeal from 2018 MBQB 121

HAMILTON JA (for the Court):

[1] We dismissed, with brief reasons to follow, the applicant's appeal of the dismissal, by a judge of the Court of Queen's Bench (the application judge), of his application to "void" the stays entered by the Crown in 20 private prosecutions commenced by him (the informations). These are our reasons.

[2] The informations sworn by the applicant allege 37 counts of criminal conduct (breach of trust, fraud and disobeying a statute) against eight individuals, including the former Governor General of Canada; the Chief

Justices of the Federal Court and Federal Court of Appeal; and the federal and former provincial Ministers of Justice.

[3] The application judge did not err when she summarily dismissed the application on the basis that section 579 of the *Criminal Code* (the *Code*) authorised the Crown's actions to stay the proceedings prior to the pre-enquete hearing (see section 507.1 of the *Code*) and that there was nothing in the record to suggest that this exercise of discretion by the Crown was abusive.

[4] When the informations were before the Provincial Court for the pre-enquete hearing, the Crown intervened and stayed the proceedings pursuant to section 579. As a result, the Provincial Court judge no longer had the jurisdiction to decide, pursuant to section 507.1, whether the persons named in the informations would be compelled to attend court to answer to the offences charged.

[5] The applicant applied to the Court of Queen's Bench challenging the Crown's intervention. He alleged that the Crown's actions were an abuse of process and argued that the proceedings should be returned to the Provincial Court to determine whether process should issue against the persons named in the informations.

[6] The applicant asserts that the application judge misinterpreted section 579 of the *Code*. He argues that the Crown has no discretion to stay the proceedings prior to process having been issued by the Provincial Court judge. He also alleges that there is a reasonable apprehension that the application judge was biased.

[7] The application judge properly rejected the applicant's argument that the Crown had no discretion to stay proceedings until process had issued. The applicant relied on *Dowson v The Queen*, [1983] 2 SCR 144, which was interpreting a repealed version of section 579 with different wording. The Crown has the authority to exercise its discretion to stay proceedings in a private prosecution at any time after the information is sworn (see *R v McHale*, 2010 ONCA 361 at paras 89-90, leave to appeal to SCC refused, 33796 (18 November 2010); *Canadian Broadcasting Corporation et al v Morrison*, 2017 MBCA 36 at para 24; and *R v Ackerman*, 2018 MBCA 75 at para 5).

[8] Furthermore, the application judge correctly explained that, "before the court embarks on an inquiry into the Crown's exercise of its discretion to stay proceedings, [the applicant] must first satisfy the court that such an inquiry is warranted" (at para 8) and rightly concluded that the applicant failed to do so (see *R v DN*, 2004 NLCA 44 at para 45; and *Heffernan v Alberta*, 2018 ABQB 13 at para 35).

[9] The applicant's allegation of bias against the application judge is without merit and requires no further comment.

[10] For these reasons, we dismissed the appeal.

Hamilton JA

Pfuetzner JA

Simonsen JA