

LOUIS BEAVER (*Appellant*) ..... APPLICANT;

1957

AND

\*Feb. 18  
Feb. 19

HER MAJESTY THE QUEEN ..... RESPONDENT.

## MOTION FOR LEAVE TO APPEAL

*Criminal law—Leave to appeal to the Supreme Court of Canada—Extension of time—“Special reasons”—The Criminal Code, 1953-54 (Can.), c. 51, s. 597(1)(b), as re-enacted by 1956, c. 48, s. 19.*

The discretionary power given to the Supreme Court, or a judge of that Court, to extend the time within which leave to appeal may be obtained under s. 597(1)(b) of the *Criminal Code*, as re-enacted in 1956, is conditional upon the existence of “special reasons”. A mere agreement between counsel, made for their own convenience, as to the date on which an application for leave will be made does not come within the meaning of these words.

APPLICATION for leave to appeal from two judgments of the Court of Appeal for Ontario (1), dismissing appeals from convictions.

*C. L. Dubin, Q.C.*, for the appellant, applicant.

*W. M. Martin, Q.C.*, for the respondent.

The judgment of the Court was delivered by

FAUTEUX J.:—The appellant applied for leave to appeal from two judgments of the Court of Appeal for Ontario. The first, pronounced on October 17, 1956 (1), affirmed his conviction on an indictment charging him with possession and sale of a drug, contrary to the provisions of the *Opium and Narcotic Drug Act*. The second, delivered on the 24th of the same month, affirmed his conviction as being an habitual criminal. The grounds, upon which leave to appeal is applied for, admittedly raise important questions of law involving conflicting judgments of other Courts of Appeal.

The application, however, is made under s. 597(1)(b) of the *Criminal Code*, 1953-54 (Can.), c. 51, as re-enacted in 1956 by 4-5 Eliz. II, c. 48, s. 19. The section provides for a right of appeal on any question of law, if leave is granted by the Supreme Court of Canada *within 21 days* after the judgment appealed from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may, *for special reasons*, allow. Counsel for the

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\*PRESENT: Fauteux, Abbott and Nolan JJ.

(1) [1956] O.W.N. 798, 116 C.C.C. 231, 25 C.R. 53.

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applicant was therefore invited to indicate what special reasons, if any, could afford a justification for this Court to extend, for a period of nearly three months, the period of time within which the application for leave was made in this case. It was intimated to us that immediately subsequent to the pronouncement of these judgments, counsel for the appellant informed counsel for the respondent of an intention to appeal and suggested that the application for leave should be made at a time convenient to both. To this suggestion, counsel for the Crown assented in view of the importance of the questions and of the sentence of preventive detention.

It must be noted that the exercise of the discretionary power given to this Court or to a member thereof to extend the period of time within which an application for leave may be made under s. 597(1)(b), is conditional upon the existence of special reasons. Mere agreements which, for their own convenience, counsel may care to make, do not come within the meaning of special reasons and are foreign to the diligence required in the administration of justice and which the expression "special reasons" is particularly meant to foster. It may be, as it was intimated by both counsel, that there was a misapprehension as to the practice before this Court. However, with the concurrence of the Chief Justice, it is now emphasized that this should no longer be the case in the future. Under all the circumstances, we feel that to do justice to this case, leave should not be refused on this point which was raised by the Court.

Leave to appeal from the judgment of the Court of Appeal for Ontario affirming, on October 17, 1956, the conviction of the appellant, is granted on the grounds numbered 1, 2, 3 and 4 of the application.

With respect to the judgment of October 24, 1956, affirming the conviction of being an habitual criminal, leave to appeal is granted conditionally upon the appeal from the judgment of October 17, 1956, being successful.

*Leave to appeal granted.*

*Solicitors for the appellant, applicant: Kimber & Dubin,  
Toronto.*

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