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CANADA / JUDGMENT

## R. v. Bekar

2003 BCCA 325

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COURT

British Columbia Court of Appeal

DECIDED

3 June 2003

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2003BCCA0325

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Bekar,

2003 BCCA 325

Date: 20030603

Docket: CA028746

Between:

Regina

Respondent

And

Eugene Bekar

Appellant

Before:

The Honourable Madam Justice Prowse

The Honourable Madam Justice Ryan

The Honourable Madam Justice Huddart

Appellant

Appearing via video conferencing on his own behalf

W.J.S. Bell

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia

March 10, 2003

Place and Date of Judgment:

Vancouver, British Columbia

June 3, 2003

Written Reasons of the Court

Reasons for Judgment of the Court:

## Introduction

- [1] On June 14, 2001, the appellant, Eugene Bekar was convicted by a jury in Smithers of two counts of uttering threats to kill or cause bodily harm to Ian Meiklem.
- [2] Mr. Bekar appeals his conviction on a number of grounds. He says that the trial judge erred in refusing to declare that he could not receive a fair trial in the Supreme Court of British Columbia; that the trial judge erred in several of her rulings during the course of the trial; and that the trial judge erred in her instructions to the jury.
- [3] In conjunction with the appeal Mr. Bekar also filed an application to this court for a declaration that he did not receive a fair trial, and for a declaration under s. 24(1) of the Canadian Charter of Rights and Freedoms that his ss. 7 and 11 rights have been infringed.

## The Notice of Motion for Charter Relief

- [4] At the outset of his criminal trial the appellant sought a ruling that he could not receive a fair trial in the courts in British Columbia. The application was dismissed. He has filed a fresh application for that relief in this court.
- [5] This court may consider the dismissal of the application at trial as a ground of appeal against conviction, but being a statutory court of appeal, this court does not have the authority to entertain the application de novo beyond the conviction appeal itself. The question is whether Mr. Bekar received a fair trial. That issue will be dealt with as a ground of appeal on the conviction appeal.
- [6] Mr. Bekar has filed an affidavit along with his application for Charter relief. In the affidavit Mr. Bekar sets out his view of the history of litigation that has consumed much of his time and energy since the mid-1980's. Because it provided evidence of context and motive for his actions, Mr. Bekar was permitted to discuss some of that history when he testified in defence of the criminal charges during the course of his trial. This court has examined the material

in the affidavit as "fresh evidence" in determining whether Mr. Bekar's criminal trial could be said to be unfair or whether any of his other grounds of appeal can be sustained.

## The Trial

[7] The appellant was charged in a two-count Indictment which read as follows:

### Count 1

Eugene BEKAR, between the 10th day of December, 1998, and the 18th day of December, 1998, inclusive, at or near the City of Victoria, in the Province of British Columbia, did knowingly utter a threat to Glen Clark, to cause death or bodily harm to Ian Meiklem, contrary to Section 264.1(1)(a) of the Criminal Code.

### Count 2

Eugene BEKAR, between the 28th day of June, 1999, and the 10th day of July, 1999, inclusive, at or near the City of Victoria, in the Province of British Columbia, did knowingly utter a threat to Glen Clark, to cause death or bodily harm to Ian Meiklem, contrary to Section 264.1(1)(a) of the Criminal Code.

[8] The charges stem from the contents of two letters written by Mr. Bekar to the Premier of British Columbia, Mr. Glen Clark, in 1998 and 1999. The letters outlined Mr. Bekar's perceived grievances with the justice system and contained words which were alleged to constitute threats to the life of a judge of the Supreme Court of British Columbia who had presided, in 1992, over Mr. Bekar's matrimonial litigation.

## Pre-trial motions

[9] Mr. Bekar elected to be tried by judge and jury. He chose to represent himself at the trial which took place in Smithers from June 11, 2001 to June 14, 2001.

[10] Before evidence was called at trial the appellant brought on a number of preliminary motions. On February 12, 2001, the trial judge, Madam Justice Baker, heard argument on two written applications by Mr. Bekar. The first was to withdraw some admissions that he had made for trial, the second was for a declaration that he could not get a fair trial in the Supreme Court of British Columbia. Madam Justice Baker allowed the first motion but dismissed the second.

[11] During submissions Mr. Bekar also sought leave to call the prosecutor as a witness at trial. Mr. Bekar wanted the Crown to testify as to a conversation that he had had with Justice Meiklem prior to the trial. The Crown advised Madam Justice Baker that Justice Meiklem discussed with him a possible in-person meeting with Mr. Bekar. Crown counsel said this:

With respect to calling myself as a witness, that's improper. I can say for the record that when the matter was -- got on the rails, Mr. Justice Meiklem did contact me with a view to trying to diffuse the matter and speaking to Mr. Bekar personally. I told Mr. Justice Meiklem that I couldn't -- given my role, I couldn't have any part in that, and I left it up to him. I had no other evidence to give with respect to that. And I'm -- I'm satisfied that I can -- I'm prepared to make that -- that statement on the record.

[12] The trial judge refused to permit the appellant to call the prosecutor as a witness. She found that his evidence would not assist the jury in determining the issues before them.

### The Evidence at trial

[13] At the start of the trial Crown counsel made an opening statement to the jury. The appellant sought the permission of the trial judge to make his opening statement before the first Crown witness was called. The trial judge ruled that the appellant could make his opening before he called evidence if he chose to do so then.

[14] The Crown's case at trial disclosed that on December 17, 1998 the Correspondence branch of the Office of the Premier of British Columbia received a letter, dated December 11, 1998, addressed to Premier Glen Clark. The letter contained a statement by Mr. Bekar, that if he found reasonable evidence that Justice Meiklem had relations with his wife, "and the responsible official have not dealt with him at that time I will kill that man and I do believe it is my duty to do so."

[15] On July 6, 1999 the Executive Office of the Premier received a letter dated June 29, 1999 from Mr. Bekar. In particular the letter stated that frustration and stress had taken its toll and it asked the Premier to help him "obtain justice without violence." Mr. Bekar also included this paragraph: "As for Meiklem he has very conveniently supplied the necessary reasonable evidence in his reasons for decision. He has knowingly and vindictively denied me a fair trial. He will die."

[16] The evidence disclosed that on August 3, 1999 the Assistant Deputy Minister of the Ministry of Attorney General wrote to Mr. Bekar acknowledging receipt of the June letter and advising that no response would be forthcoming because of the threat contained in it. He advised Mr. Bekar that the letter had been referred to the police.

[17] Mr. Bekar responded to the Assistant Deputy Minister by letter dated September 9, 1999, making further allegations, and asking him to re-read previous letters. Mr. Bekar ended by asking for the Assistant Deputy Minister's help in obtaining "what our Constitution says we are entitled to."

[18] The Crown led evidence that members of the R.C.M.P. arrested the appellant at his ranch outside Smithers on October 19, 1999, and, pursuant to a search warrant, seized his computer from the residence. Copies of the December 11, 1998 and June 29, 1999 letters were found by the police on the computer's hard drive.

- [19] At the conclusion of the Crown's case Mr. Bekar called three witnesses before testifying himself. Two witnesses briefly described prior proceedings in which they had been involved in the courts. One witness testified about the value of timber on the property which had been apportioned to Mrs. Bekar by Meiklem J. in the matrimonial litigation.
- [20] Mr. Bekar gave evidence. He told the jury that he had been involved in various court cases which began after he tried and failed to re-zone some property for redevelopment in the Regional District of Bulkley-Nechako. He filed a volume of material which contained some of the history of his dealings with the Regional District, letters written and received, litigation he had been involved in, and reasons for judgment in some of the cases.
- [21] Mr. Bekar discussed an appeal the Regional District took of an order dismissing an application by the Regional District under s. 67 of the Supreme Court Act (as it then stood) to find Mr. Bekar a "vexatious litigant", and he discussed his appeal of an order dismissing his application to set aside a by-law of the Regional District relating to the building of a swimming pool. The appeals had been heard by a division of this court on September 17 and 18, 1990. Mr. Bekar voiced some suspicion in the way the two appeals came to be heard one after the other. He said that the "swimming pool appeal" was heard first. He testified that he argued the appeal himself and that the court reserved judgment. He said that he was out of the court when the Regional District's appeal began. A lawyer was acting for him on that appeal. Mr. Bekar said that he was not there for the hearing of the second appeal, but that his lawyer advised him that the court had announced that the "swimming pool appeal" was dismissed with costs with reasons to follow. He said that his lawyer told him that he had better seriously consider giving the Regional District the "vexatious litigant" order. He testified that his lawyer told him that the Regional District was willing to forego its costs in the first appeal which amounted to about \$20,000. Mr. Bekar testified:

In that court, the court had already said that they had dismissed that appeal, and the fact that they had dismissed it, that we would win this appeal, that vexatious appeal, but the fact that they had dismissed the one from the -- from the previous day, the Regional District could reapply, and the courts would likely look at it more favourable, now that they had dismissed that previous one. So the lawyer mentioned that, and he said, "Yes", he says, "I think you should sign it."

I signed it. He signed it, I signed it; I don't deny it to this day, I never have denied it.

- [22] The order signed by Mr. Bekar states in part:

THIS COURT FURTHER ORDERS that; with the exception of any action or decision of the Appellant Regional District of Bulkley-Nechako, its officers and employees which specifically affect the Respondent E. Bekar in a different capacity than any other resident of the Regional District; or relate to any application for rezoning of land owned by the Respondent E. Bekar or his wife, the Respondent E. Bekar shall not:

- (a) institute any legal proceedings against the Appellant Regional District of Bulkley-Nechako, its officers, employees or Directors without providing the Appellant Regional District of Bulkley-Nechako with 30 days notice of any intended proceeding and without obtaining leave of a Justice of the Supreme Court, with notice to the Appellant Regional District of Bulkley-Nechako of any such leave application;
- (b) commence any proceedings in the Court of Appeal against the Appellant Regional District of Bulkley-Nechako, its officers, employees or Directors without providing the Appellant Regional District of Bulkley-Nechako with 30 days notice of any intended appeal and without obtaining leave of a Justice of the Court of Appeal with notice to the Appellant Regional District of Bulkley-Nechako of any such leave application.

...

THIS COURT FURTHER ORDERS that the respondent E. Bekar forthwith discontinue all outstanding proceedings and appeals without costs to either party in any actions; specifically including the following:

- (a) A901433

SCBC Vancouver Registry

- (b) CA12694

Court of Appeal Vancouver Registry

- (c) CA011422

### **Court of Appeal Vancouver Registry**

- [23] The first action number, A901433, refers to an action that had been heard and judgment reserved by Mr. Justice Spencer. Mr. Bekar was one of five petitioners who were interested in setting aside a refuse disposal by-law of the Regional District of Bulkley-Nechako. CA011422 was the number of the "swimming pool appeal."
- [24] The appellant said that after he signed the consent order that the lawyers for the Regional District drew the order to the attention of Mr. Justice Spencer who, as mentioned earlier, had reserved judgment in action A901433. Soon thereafter Spencer J. dismissed the action, in accordance with the consent order with no costs to either the Regional District or to Mr. Bekar. Spencer J. did, however, order that the other petitioners be awarded "their reasonable disbursements." As to that Mr. Bekar testified:

In other words, all these other litigants in this here get their costs -- its not totally costs, its disbursements -- disbursements back except me. In other words, the courts have singled me out for separate treatment at this stage, and this is -- all the litigant action after is affected by this consent vexatious, and this is the result of that complaint I showed you yesterday. That's what the complaint is, that complaint to the RCMP that this be investigated.

They used approximately twenty thousand dollars of the Regional District's money, of public money, to get me to sign that consent vexatious. It looked like a good deal at that time. If things would have been as it was, there would have been nothing wrong, but as it becomes more open, we see what's -- what's going on.

- [25] The appellant said that after he signed the consent order he contacted the Court of Appeal registry and was told that there would be no decision in the by-law appeal because he had agreed to discontinue all outstanding actions against the Regional District. He said that the only reason he had signed the consent order was because the court had announced that the appeal was dismissed. He said that he was unable to get a transcript of the hearing to verify what happened.
- [26] Mr. Bekar then explained to the jury how he reported his lawyer to the Law Society. He told the jury that during the course of the Law Society's investigation of the matter, the lawyer for the Regional District and one of the judges sitting on the appeal indicated that the "swimming pool appeal" had been dismissed. Mr. Bekar filed the correspondence relating to his complaint to the Law Society. As part of the material he filed a letter written to him April 2, 1991 from the Director, Judicial Administration advising him that no reasons for judgment were given since the appeals were abandoned by consent. He filed another letter from his former lawyer dated July 11, 1991 explaining that on the second day of the appeal the court had said that his appeal was dismissed. His lawyer said that he could not recall if extensive reasons were given by the court, or "whether they simply made that announcement." The letter goes on to say that "reasons will not be formally given since there is no longer an Appeal before the Court in which they can be given." A letter from the Law Society dated August 27, 1991 explained:

From my reading of the materials provided by you and the letters received from Messrs. McDonald and McDannold, this appears to me to be a situation in which both the lawyers and the Registry are right, but I can appreciate that this is not immediately apparent and could be quite confusing to you.

It appears quite clear that at sometime during the morning of September 18, 1990, the Court made an announcement to Counsel, in your absence, indicating their decision to dismiss your Appeal in CA011422 and the Reasons for Judgment and a decision on costs would follow. Given that decision, and the other factors Mr. McDonald noted in his letter of July 11, 1991, Mr. McDonald recommended a settlement to you which covered not only the Appeal No. V01003, the Appeal that he was in the midst of arguing, but also resolved any outstanding questions with respect to Appeal Nos. CA011422, CA12694 and A901433.

Given that resolution by way of the consent order, it was not necessary for the Court to formally record a decision in Appeal CA011422 nor to issue reasons because the consent order settled that matter.

If a resolution had not been achieved with respect to Appeal CA011422 and the Court had ultimately issued reasons for dismissing your Appeal, in all likelihood, you would have had costs awarded against you following the event. That was one of the factors noted by Mr. McDonald in recommending the settlement by way of consent order to you.

[27] In his testimony Mr. Bekar told the jury that his complaint to the Law Society had been dismissed and insisted to the jury that that there was "still no decision on the swimming pool appeal to this day."

[28] The appellant then went through certain portions of the reasons for judgment in his matrimonial case which he thought to be unfair to him. He mentioned that Justice Meiklem had a connection to the community near Smithers, and the fact that a member of Justice Meiklem's former law firm had had some dealings with a client opposed in interest to Mr. Bekar in 1989. He noted that Justice Meiklem had practised with a lawyer in another law firm in 1991 when Mr. Bekar reported the other lawyer to the Law Society. Mr. Bekar gave his opinion to the jury that this created a conflict of interest.

[29] Mr. Bekar continued with his narrative before the jury about various court decisions and letter-writing campaigns in which he had been engaged.

[30] As to the letter of December 11, 1998 Mr. Bekar testified that he had received a response from the Premier by letter dated February 1, 1999. That letter, he said, indicated that the Premier had passed the letter to him on to the Attorney General and had asked him to respond. The appellant said:

In other words, the Premier did not look at that letter as a threatening or anything. Thanked me for the letter and referred it to the Honourable Ujjal Dosanjh at that time, who was the Attorney General. I never did get a reply from the Attorney General related to -- related to the Premier's response here.

[31] Next, Mr. Bekar referred to a letter dated August 3, 1999 sent to him by the Attorney General's office. In that letter Mr. McCandless, the Assistant Deputy Minister, advised Mr. Bekar that no response had been forthcoming about the complaints in his letter received July 6, 1999 because of the "threatening nature" of his comments. Mr. McCandless also advised Mr. Bekar that "due to the threats against the judge in your previous letters, copies have been sent to the police."

[32] Mr. Bekar read to the jury a copy of the letter he sent in response to that of Mr. McCandless. The letter reiterated his issues with the court system and with the conduct of his matrimonial case. In the letter Mr. Bekar said that he regretted "the threatening nature of my comments", and went on to say that his first letters were not of a threatening nature but "of a pleading nature as is this letter but were dealt with like yesterdays newspapers." I have not reproduced all of the letter, but Mr. Bekar ended it this way:

In closing, I will reiterate I am not a violent person this is and can remain a great country worth fighting for. I am sure the good judges which I still believe and hope are the majority support my actions and have indicated that more than once.

The bottom line has being and remains-- a fair and open trial in above family matter #5695 conducted by a competent judge who will conduct the trial in good faith. An in depth look into the reasons for the trickery and entrapment in appeal V01003 and its subsequent effect on judges and lawyers.

I am only asking for what our Constitution says we are entitled to. I will pursue that right vigorously and do believe it my duty to do so. I am pleading for your help. {just short of begging}

[33] On cross-examination Mr. Bekar said that he wanted the letters to be taken seriously, but not seriously as a threat. He said:

[Mr. Bekar]

A Not -- not seriously as a threat, no. I wanted it to be taken seriously, they would not react to previous letters with almost as strong an action in it so I just had to tighten it up, tighten it up till they act. They had to do something, this -- I --

[Prosecutor]

**Q** So --

A -- wanted them to acknowledge. I was hoping the attorney general would realize and take it into court and pursue justice. And that is what I said -- like I said, pleading, begging, for them to pursue that.

[34] When asked about his use of the words, "He will die", in the second letter, Mr. Bekar said:

A . . . if you look at that [the paragraphs containing the words "he will die"] closely, that is not near as severe as the first letter. The very fact after the first letter I did get a response from the Premier so I expected something was looked into and I knew at that time there was a big hassle between the Premier and the attorney general Ujjal Dosanjh, that a power struggle was going on, and I assumed that's why I didn't get a reply.

So I decided to write another letter and to just hold it down a bit, and I just simply state "he will die," we will all die.

[35] In his address to the jury Mr. Bekar pointed out that the first letter had been written in December 1998 and that he had not been arrested until October 1999. He said that the Premier responded to his first letter and "it certainly doesn't sound, to me, that there was any threatening nature in there. The words, perhaps, might have been, but I guess I didn't read the bottom, but I wrote 'stressed' and stuff like this, and which it was. It was a desperate plea for action on this." He argued that he would not have been arrested for the first letter if it were not for the second.

[36] Mr. Bekar also made technical arguments to the jury about the timing of the Indictment and what was required to be proved by the Crown. The appellant has raised some of these points as grounds of appeal. They will be dealt with later in these reasons for judgment.

### The Grounds of Appeal

[37] The appellant appeals on the following grounds:

1. that the trial judge erred in dismissing his application for a declaration that he could not get a fair hearing in the Supreme Court of British Columbia;
2. that the trial judge erred in refusing to permit the appellant to call the prosecutor as a witness;
3. that the trial judge erred in refusing to allow the appellant to make an opening statement at the conclusion of the Crown's opening;
4. that the trial judge erred in refusing to allow the appellant to argue pre-charge delay before the jury;
5. that the trial judge erred in her instructions to the jury with respect to the mens rea of the offence;
6. that the trial judge erred in failing to instruct the jury on the insufficiency of the Indictment.

### Discussion of the Grounds of Appeal

#### A fair trial

[38] The appellant argued that as a result of what he said he believed to be improprieties in the handling by the courts of his matrimonial action and in his appeals he was unable to obtain a fair trial before any sitting of the Supreme Court of British Columbia. There is nothing in the material which would provide a credible basis for such an assertion.

[39] The trial judge correctly drew to the appellant's attention that it was the jury who would decide the issues against him on the criminal indictment before the court. As long as the appellant received a trial conducted impartially before a properly-instructed jury, he cannot complain that he was unable to receive a fair trial. The remainder of these reasons for judgment deal with issues relating to the fairness of the trial.

#### Calling the prosecutor as a witness

[40] Before the trial began, and later before he testified, the appellant sought permission to call Crown counsel as a witness. The appellant said he wished to question the prosecutor about a discussion the prosecutor had with Justice Meiklem sometime before the trial. The Crown acknowledged he had spoken with Justice Meiklem. He said that when Justice Meiklem raised the possibility of speaking with Mr. Bekar, he, the Crown, took the position that he could have no role in it, that it was entirely up to Justice Meiklem to do what he wanted.

Madam Justice Baker refused Mr. Bekar permission to call the Crown as a witness. Baker J. said the Crown's testimony would not be relevant.

- [41] The trial judge did not err in refusing to allow the appellant to call Crown counsel as a witness. To be admissible the evidence would have to touch on the issues raised by the counts in the Indictment. The evidence of the Crown would do nothing to assist the jury in resolving whether Mr. Bekar had committed the actus reus of the offence of threatening or whether he did so with the required mens rea. This ground of appeal should be dismissed.

### Opening statement

- [42] The Criminal Code provides for the order of closing addresses in s. 651. It does not provide for opening statements, but tradition has enshrined the practice. The practice is for the trial judge to permit an opening statement by the Crown before he or she opens the case for the Crown and an opening by the defence before he or she begins the defence case. The trial judge has a discretion to permit the defence to provide an opening after the Crown opens and before the first Crown witness testifies if fairness requires it. Factors that a trial judge will consider include the complexity of the issues at trial and the length of the trial.
- [43] The trial of the case at bar was not lengthy. The appellant was able to make his opening statement the day after the Crown's statement. The issues were not complicated. The Crown's opening was limited to highlighting the Crown's proposed evidence. No fairness issue militated for an opening by the appellant immediately following that of the Crown. This ground of appeal should be dismissed.

### Pre-charge delay

- [44] During his evidence in chief the appellant sought to raise the issue of pre-charge delay with the jury. The trial judge refused to permit the appellant to raise the matter with the jury. The trial judge was correct. Whether pre-charge delay amounts to a breach of an accused's rights under s. 7 of the Charter is a question of law for a trial judge.
- [45] There is nothing in the material filed in this court which would permit a review of any ruling by the trial judge on the question of pre-charge delay. There is nothing to indicate that any delay in the filing of the charges caused actual prejudice to the appellant or prevented him from making full answer and defence to the charges at trial.
- [46] This ground of appeal should be dismissed.

### The Charge on intent

- [47] The appellant complains that the trial judge did not mention "mens rea" in her charge to the jury. The trial judge discussed the intent that the Crown was required to prove. That is sufficient.

[48] In this case the words said to constitute the threat to Justice Meiklem were contained in a letter addressed to the Premier. The appellant relies on *R. v. Cenciarini*, 2000 BCSC 1223, [2000] B.C.J. No. 1728 (Q.L.), for the proposition that the Crown had to prove that the appellant intended that the Premier convey the message to Justice Meiklem. The case law does not support that proposition. The mens rea for the offence was set out by the Supreme Court of Canada in *R. v. Clemente*, [1994] 2 S.C.R. 758, 91 C.C.C. (3d) 1 at p. 4, as follows:

The mens rea is that the words be spoken or written as a threat to cause death or serious bodily harm; that is they were meant to intimidate or to be taken seriously.

[49] If the *Cenciarini* case can be interpreted to say something different, it is wrong. The Supreme Court of Canada's decision must prevail.

[50] In the case at bar the trial judge said this:

Now finally, while the Crown does not have to prove that Mr. Bekar intended to carry out his threats, the Crown must prove that Mr. Bekar sent the letters knowingly, and that he intended that what he wrote should be taken seriously. In other words, the Crown must prove that Mr. Bekar knew what he was doing, and that he was not joking, and that he intended that the threatening words used in each letter would be taken seriously. And in considering whether the Crown has proved that Mr. Bekar knowingly said what he did, intending that his words would be taken seriously, you should consider Mr. Bekar's own testimony that he wrote what he did, so that he would get what he had been asking for, a review of his previous legal proceedings.

[51] The charge properly conveyed the required mens rea, or intent, the Crown was required to prove and the proper approach to be taken by the jury. This ground of appeal must be dismissed.

## Sufficiency of the Indictment

[52] The appellant complains that the absence of a reference to the fact that his words were contained in letters renders the Indictment insufficient. He notes the absence of a reference to Smithers or Prince George as the place of the offence as a further insufficiency. He also says that the count ought to have identified "Ian Meiklem" as a judge.

[53] An indictment should provide sufficient detail of the circumstances of the alleged offence to identify the transaction to which reference will be made and to notify him of the offence with which he is charged. Section 583 of the Code specifies certain omissions which are not open to objection. It provides:

583. No count in an indictment is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of section 581 and, without restricting the generality of the foregoing, no count in an indictment is insufficient by reason only that

(a) it does not name the person injured or intended or attempted to be injured;

- (b) it does not name the person who owns or has a special property or interest in property mentioned in the count;
- (c) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;
- (d) it does not set out any writing that is the subject of the charge;
- (e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;
- (f) it does not specify the means by which the alleged offence was committed;
- (g) it does not name or describe with precision any person, place or thing; or
- (h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

[54] The appellant submits that the means by which the threats were conveyed, the letters, is absent from the words of the counts. Section 583(f) precludes this objection.

[55] The appellant has suffered no prejudice by virtue of the wording of the counts on the Indictment. The fact that the appellant's words were contained in letters was conveyed to the appellant by way of disclosure by the Crown and in the preliminary hearing.

[56] The Indictment need not have specified the place where the letters were mailed or where the complainant resided. The letters were received in Victoria. The location of the uttering was therefore in Victoria. Nothing further need have been specified.

[57] Finally, the Indictment did not specify the occupation of the person threatened. While evidence was led as to the occupation of the complainant to show the context of the threatening words, the occupation of the complainant is not a necessary ingredient of the charge of threatening under s. 264.1(1)(a) and therefore need not have been specified.

[58] This ground of appeal should be dismissed.

[59] The appellant has not been able to demonstrate any error which would permit this court to interfere with his conviction. The appeal is dismissed.

"The Honourable Madam Justice Prowse"

"The Honourable Madam Justice Ryan"

"The Honourable Madam Justice Huddart"

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