

91448-1  
Kelowna Registry

**In the Provincial Court of British Columbia**  
(BEFORE THE HONOURABLE JUDGE R. R. SMITH)

Kelowna, B.C.  
March 6, 2020

REGINA

v.

STEVEN JAMES MERRILL

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PROCEEDINGS AT TRIAL

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**Crown Counsel:**

**F. Lepine**

**Appearing on his own behalf:**

**S. Merrill**

**Proceedings**

1 Kelowna, B.C.  
2 March 6, 2020  
3  
4 (PROCEEDINGS ADJOURNED)  
5 (PROCEEDINGS RECONVENED)  
6  
7 THE COURT: Are you ready, Madam Clerk?  
8 THE CLERK: I'm ready, yes, Your Honour.  
9 THE COURT: Okay. We'll now call the Merrill matter.  
10 MR. LEPINE: It's possible he might not respond to his  
11 name, Your Honour.  
12 THE COURT: Well, we'll page it a second time, and if  
13 he doesn't respond, I'll issue a warrant for his  
14 arrest.  
15 THE CLERK: Would you like me to page it again, Your  
16 Honour.  
17 THE COURT: Yes.  
18 MR. LEPINE: If I may say, I have an honest belief the  
19 accused is here from having seen him and spoken to  
20 him this morning in the courthouse, and I believe  
21 he's outside.  
22 THE COURT: The judicial case manager advised me before  
23 that he is here so --  
24 MR. LEPINE: So calling the matter of Mr. Steven James  
25 Merrill, please.  
26 THE COURT: All right. Mr. Merrill, come forward.  
27 THE ACCUSED: Yeah, I'm the -- I'm the man who's been  
28 speaking to this file. I'm happy to come forward  
29 on the confirmation that you have the documents  
30 submitted to the court yesterday and I'm just  
31 willing to produce --  
32 THE COURT: I'm going to ask the people that are  
33 standing in the back of the courtroom to become  
34 seated.  
35 THE ACCUSED: Me, too?  
36 THE COURT: And not be blocking the door that way.  
37 THE ACCUSED: Mr. Smith, isn't it, Robin Smith?  
38 THE COURT: Judge Smith, yes.  
39 THE ACCUSED: Yeah, Robin Smith?  
40 THE SHERIFF: Stand up, please, sir, when you're  
41 talking to the judge.  
42 THE ACCUSED: Oh, really?  
43 THE SHERIFF: Yes, really.  
44 THE ACCUSED: Okay. Judge, I'm happy to come forward.  
45 Can I confirm that the affidavit is in the file?  
46 THE COURT: You can know that, just this morning,  
47 handed -- like, I don't know you, I've never met

**Proceedings**

1           you before.  
2 THE ACCUSED: We have met, actually, 2014.  
3 THE COURT: Well, maybe.  
4 THE ACCUSED: Yeah.  
5 THE COURT: I don't know --  
6 THE ACCUSED: Yeah.  
7 THE COURT: -- for what it's worth, but I can tell you,  
8           Mr. Merrill, that I do have a --  
9 THE ACCUSED: You can call me Steve, Mr. Smith.  
10 THE COURT: -- some -- no, I'll call you Mr. Merrill.  
11 THE ACCUSED: No, you can call me Steve. Mr. Merrill's  
12           an entity, that's very clear in the statement.  
13 THE COURT: Sir --  
14 THE ACCUSED: Point 1 in the statement.  
15 THE COURT: -- I'm wanting Steve James Merrill to come  
16           forward and if you're Steve James Merrill, come  
17           forward. If you're --  
18 THE ACCUSED: I'm the agent. I'm the agent for Steven  
19           James --  
20 THE COURT: No, I don't want the agent, I want Mr.  
21           Merrill to come forward. If he's not here, I  
22           don't want the wrong person being dealt with here,  
23           so if you're not Steve James Merrill, that's fine,  
24           but then you can't be filing any documents if  
25           you're not Steve James Merrill so --  
26 THE ACCUSED: Well, Steven James Merrill is a person.  
27 THE COURT: -- are you Steven James Merrill? If you  
28           are, come forward.  
29 THE ACCUSED: All my friends here call me Steven --  
30           Steven.  
31 THE COURT: Sir, are you the accused? If you are, come  
32           forward.  
33 THE ACCUSED: Well, I'm not the accused person, no, I'm  
34           a man. It's very clear I'm a man, and a man has  
35           the unlimited capacity to contract, in any way  
36           shape or form he chooses, and I've been asked to  
37           contract previously by the Canada Revenue Agency,  
38           and I was happy to contract with them.  
39 THE COURT: Sir, we haven't commenced the trial yet.  
40 THE ACCUSED: Excellent.  
41 THE COURT: And if you want to give evidence in the  
42           trial, of course the Crown will call their  
43           witnesses, you'll have your chance to give your  
44           evidence --  
45 THE ACCUSED: Yeah. Well, before --  
46 THE COURT: -- if you choose.  
47 THE ACCUSED: -- before we go anywhere, I have

**Proceedings**

1           petitioned LeDressay & Associates on two  
2           occasions, most recently on March 3rd. This  
3           fellow, here, Francois, is the fourth lawyer from  
4           LeDressay that has appeared in this matter. I  
5           haven't met him before today. Nice to meet you,  
6           by the way.

7   THE COURT:   And your point?

8   THE ACCUSED:  I petitioned on two occasions for  
9           disclosure of jurisdiction. I did get an email  
10          back from Michael and it's an exhibit in the  
11          affidavit, Michael LeDressay, who seems to be the  
12          boss, lead counsel, correct? So I really don't  
13          know where we are --

14  THE COURT:   Well, I'm --

15  THE ACCUSED:  -- and I don't have disclosure.

16  THE COURT:   I'm about to tell you where we are.

17  THE ACCUSED:  Okay.

18  THE COURT:   We're in a Provincial Court, you're in  
19          front of Judge Smith.

20  THE ACCUSED:  Okay. And the jurisdiction --

21  THE COURT:   You're --

22  THE ACCUSED:  -- the jurisdiction is? What  
23          jurisdiction are we in, that's my question, and I  
24          haven't been able to get that from LeDressay.

25  THE COURT:   Sir, can I say it any more clear than  
26          saying Provincial Court, that's the jurisdiction.

27  THE ACCUSED:  Yeah -- yeah, you could, is this common  
28          law, is this --

29  THE COURT:   Sir, I'm not going to play your games.

30  THE ACCUSED:  It's not a game.

31  THE COURT:   It is a game.

32  THE ACCUSED:  No, it's not. Is this a civil matter or  
33          a criminal matter?

34  THE COURT:   And -- sir, don't over-talk me when I'm  
35          talking.

36  THE ACCUSED:  Okay.

37  THE COURT:   When I'm talking, you listen.

38  THE ACCUSED:  Is this a civil matter or a criminal  
39          matter?

40  THE COURT:   Sir, I'm talking right now and I want you  
41          to listen.

42  THE ACCUSED:  Okay.

43  THE COURT:   You're in Provincial Court, you're charged  
44          with four counts under the *Income Tax Act*,  
45          Section 231.2.

46  THE ACCUSED:  I've got no evidence of that, no  
47          disclosure.

**Proceedings**

1 THE COURT: Sir, listen. Listen.  
2 THE ACCUSED: Just for the record. The filings were  
3 made.  
4 THE COURT: Sir, how many more times can I tell you to  
5 just listen?  
6 THE ACCUSED: Okay. I'm listening. Thank you, Robin.  
7 THE COURT: You're asking -- you didn't know where we  
8 were. I started off by telling you you're in  
9 Provincial Court, you're in front of Judge Smith.  
10 You're charged with four counts under the *Income*  
11 *Tax Act*, s. 238(1). The Crown allegation is that  
12 you were served with a notice on the 30th of  
13 January 2019 to file tax returns for the tax years  
14 2014, 2015, 2016, and 2017, and the Crown  
15 allegation is that you did not comply with the  
16 notice served on you.  
17 This matter is not a first time in court,  
18 it's now set for trial, which tells me that you've  
19 been in front of others before now, judicial case  
20 managers and the like --  
21 THE ACCUSED: Three --  
22 THE COURT: -- in order to -- because we judges don't  
23 set these trial dates. I -- I did -- I have no  
24 idea of what I'm dealing with today until I came  
25 to court this morning.  
26 THE ACCUSED: Yeah.  
27 THE COURT: Okay?  
28 THE ACCUSED: Yeah.  
29 THE COURT: I had no idea so --  
30 THE ACCUSED: But you -- you did find the affidavit  
31 that I submitted to the file yesterday?  
32 THE COURT: Well --  
33 THE ACCUSED: I see it there.  
34 THE COURT: -- only -- only five minutes before court  
35 started.  
36 THE ACCUSED: Oh, really?  
37 THE COURT: Yes.  
38 THE ACCUSED: Okay. Well, it took me three hours to  
39 sort of get it into the file yesterday because --  
40 THE COURT: Well, that's what happens when you file  
41 stuff the day before the trial.  
42 THE ACCUSED: Well, the girls weren't that  
43 accommodating. I had to find three --  
44 THE COURT: Sir, that's what happens when you file  
45 stuff the day before court.  
46 THE ACCUSED: Well, the girls didn't --  
47 THE COURT: People don't come in at 3:00 in the morning

**Proceedings**

1 to read material that had been filed the day  
2 before. It doesn't work that way. Things are  
3 timely served when it comes to notice. This  
4 wasn't timely done or else it would have been  
5 brought to my attention earlier.

6 THE ACCUSED: Okay. But can we --

7 THE COURT: Sir, no, don't -- stop.

8 THE ACCUSED: We can agree you have it now? Okay.

9 THE COURT: I do have it now.

10 THE ACCUSED: Yes, excellent.

11 THE COURT: I obviously haven't read it from cover to  
12 cover, but I have looked at it.

13 THE ACCUSED: Okay.

14 THE COURT: I definitely looked at it, especially the  
15 front part of it, I just haven't had time to look  
16 -- because you have a lot of attachments to it. I  
17 haven't had time to go through of all of those  
18 attachments yet. How could I have in five  
19 minutes? I couldn't have, right?

20 THE ACCUSED: I suppose. Yeah, I -- I just were under  
21 the impression that judges came a bit earlier and  
22 looked at submissions to the file.

23 THE COURT: No, I didn't come at four o'clock this  
24 morning to read all of this. That's not what  
25 happened this morning.

26 THE ACCUSED: I apologize, I -- I thought you might  
27 have had half an hour.

28 THE COURT: Sir, I didn't know, a half an hour before  
29 court started, that I was even dealing with this  
30 matter. Are you listening to what I'm saying?

31 THE ACCUSED: Well, I just heard that, yes. I didn't  
32 know that.

33 THE COURT: And so there's no way I could have looked  
34 at this --

35 THE ACCUSED: It's just --

36 THE COURT: -- earlier because it wasn't assigned to me  
37 until maybe 10 minutes before 9:30, right? About  
38 9:20, I hear about this, okay?

39 THE ACCUSED: Well -- yeah. Well, we're kind of in the  
40 same --

41 THE COURT: And that's the way it is with judges, we  
42 don't pre --

43 THE ACCUSED: Okay.

44 THE COURT: -- we don't get involved in any of the  
45 process.

46 THE ACCUSED: Right.

47 THE COURT: It comes in front of us and then we pass --

**Proceedings**

1           you know, we -- we listen and we pass judgment,  
2           but we -- we're not involved in the bringing it  
3           forward.  
4   THE ACCUSED: Right.  
5   THE COURT: So, of course, I would know nothing about  
6           it before this morning.  
7   THE ACCUSED: But we do now.  
8   THE COURT: But I do have it filed now, and I  
9           acknowledged that with you.  
10  THE ACCUSED: Thank you. Do you acknowledge the  
11           second-last point in the affidavit, too, please?  
12           I think it's -- here, I'll help you with it.  
13  THE COURT: When you say the second-to-last point, I --  
14           I have no idea what you're referencing because the  
15           paragraphs --  
16  THE ACCUSED: That's point 58 -- it's point 58 on  
17           page 6.  
18  THE COURT: [As read in]:  
19  
20           . . . affiant does hereby choose to accept  
21           the mandatory and binding oath and true  
22           allegiance of Her Majesty of the presiding  
23           judges, assigns, and court clerks, and all  
24           public servants relating as their open and  
25           binding offer to conduct theirselves in  
26           accordance with all the common law and the  
27           constitutions of Canada, Province of British  
28           Columbia and British Columbia Province of aka  
29           . . .  
30  
31           And then you go on and on and on and on.  
32  THE ACCUSED: No, it's just -- it's just a few more  
33           lines.  
34  THE COURT: See, it's irrelevant to me whether you  
35           accept it, or not. You're here and --  
36  THE ACCUSED: It's -- it's not irrelevant --  
37  THE COURT: -- and you're in front of a Provincial  
38           Court -- it's irrelevant whether you accept it.  
39  THE ACCUSED: I'm -- I'm just looking for fairness, and  
40           I'm looking to correct a mistake, and I've been  
41           here three times to try and correct a mistake.  
42  THE COURT: Look, you're in front of a Provincial Court  
43           judge now.  
44  THE ACCUSED: And it's -- it's -- it's important to me  
45           that the Provincial Court judge I'm standing in  
46           front of, looking for fairness --  
47  THE COURT: Of course.



**Proceedings**

1 THE ACCUSED: -- is a sworn officer or agent, or  
2 servant of Her Majesty. And it's on my  
3 understanding, and I could be wrong, that judges  
4 in Canada all swear oaths to Her Majesty, an oath  
5 of allegiance to Her Majesty. Now, I've looked  
6 that up in the *Oath of Allegiance Act*.

7 THE COURT: No.

8 THE ACCUSED: Is that not the case?

9 THE COURT: I'm not going down your rabbit holes, it's  
10 not happening.

11 THE ACCUSED: It's just -- it's -- I think it's the  
12 case.

13 THE COURT: I'm telling you I am a judge that has  
14 authority and if you don't want to accept my  
15 authority, you can play that line and see how that  
16 plays out for you. I'm telling you I do have the  
17 authority to deal with this matter.

18 THE ACCUSED: But you're not on oath?

19 THE COURT: I didn't say anything about oath, I'm  
20 telling you that I have the authority to deal with  
21 this matter.

22 THE ACCUSED: I have the authority to deal with this  
23 matter. I have an interest in this matter.

24 THE COURT: Of course, so I'm pleased to have you here.

25 THE ACCUSED: I'm pleased to meet you again, Robin, but  
26 I'd like to confirm --

27 THE COURT: I --

28 THE ACCUSED: -- that you are --

29 THE COURT: I don't recall -- you tell me that I've met  
30 you before, but I don't recall, but I don't --

31 THE ACCUSED: 2014.

32 THE COURT: I don't doubt you, but --

33 THE ACCUSED: April 1st, 2014.

34 THE COURT: Sir, I don't -- I'm telling you, I don't  
35 recall.

36 THE ACCUSED: Okay. I do.

37 THE COURT: But I don't doubt you when you say that  
38 because it's quite possible.

39 THE ACCUSED: Right. Well, it is -- and there were --  
40 some of the people here do remember that day.

41 THE COURT: Fair enough.

42 THE ACCUSED: Yeah.

43 THE COURT: Fair enough, but I'm telling you I don't  
44 remember.

45 THE ACCUSED: It wasn't a good day for me.

46 THE COURT: I -- I don't recall it.

47 THE ACCUSED: Okay. Well, we do know of you in

## Proceedings

1 Kelowna. You're a -- you're a citizen, like I am,  
2 of Her Majesty, and in this country, we all  
3 believe, like, that -- that -- that there's a  
4 Queen and that there's oaths sworn to the Queen  
5 and we believe, a lot of us, that judges' oaths  
6 are sacrosanct and that that binds you to the  
7 common law and the Queen who swore to us, in 1953,  
8 a coronation oath, and that we're all friendly and  
9 we can deal with each other cordially and  
10 efficiently and courteously.

11 MR. LEPINE: Your Honour, if I may --

12 THE ACCUSED: I'm speaking.

13 MR. LEPINE: -- I thought it might be helpful to the  
14 court if I brought this.

15 THE ACCUSED: Now, this is -- this is all --

16 THE COURT: Brought what, the *Mete* decision?

17 MR. LEPINE: Yes.

18 THE COURT: Is that what you're -- I don't need it,  
19 I've got the *Mete* decision.

20 MR. LEPINE: Okay.

21 THE COURT: I've read it a hundred times so --

22 THE ACCUSED: The *Mete* decision.

23 THE COURT: So of course I know that. I don't need  
24 that right now.

25 THE ACCUSED: We're not talking about a natural person  
26 still, Francois.

27 THE COURT: What I need to say is that I have  
28 jurisdiction. I have jurisdiction to deal with  
29 this and whether the accused wants to accept that,  
30 or not, is irrelevant to me.

31 THE ACCUSED: The -- the accused --

32 MR. LEPINE: Well, the matter is set for trial this  
33 morning.

34 THE COURT: Yes, it is.

35 MR. LEPINE: And it could -- this could go on for a  
36 long time, but --

37 THE ACCUSED: Yeah, you could --

38 MR. LEPINE: -- I suggest we just get started.

39 THE ACCUSED: No, no.

40 THE COURT: It's not going to go on for a long time  
41 because I'm saying that I have the jurisdiction  
42 and I'm about to start the trial.

43 THE ACCUSED: And the jurisdiction is --

44 THE COURT: Sir, I'm not going down your rabbit holes.

45 THE ACCUSED: Can I just identify for everybody here --

46 THE COURT: No.

47 THE ACCUSED: -- whether we're dealing civilly --

**Proceedings**

1 THE COURT: No, you can't because you're not  
2 controlling this process.

3 THE ACCUSED: -- civil or criminal?

4 THE COURT: Look at my eyes. You're not controlling  
5 this process.

6 THE ACCUSED: No, I understand that.

7 THE COURT: I am. I'm telling you I have the  
8 jurisdiction. If you want to choose to challenge  
9 that, see where that gets you.

10 THE ACCUSED: Well, I've asked the Crown what's -- you  
11 know, the Crown counsel, sorry, on two  
12 occasions --

13 THE COURT: We're going to start this trial now.

14 THE ACCUSED: I've asked the Crown on two occasions --

15 THE COURT: Sir, we're going to start this trial now.

16 THE ACCUSED: -- and I got --

17 THE COURT: And if you can't quit talking when I'm  
18 talking, then what am I going to do about that?  
19 I'm going to have to have you in another room  
20 where you're listening, but we can't hear you?  
21 That's not a very good way of --

22 THE ACCUSED: No, it's --

23 THE COURT: -- addressing your trial. Come on.

24 THE ACCUSED: No, it's not. It's not courteous, it's  
25 not fair.

26 THE COURT: Of course not. I don't want that either,  
27 but you've got to not over-talk me all the time.

28 THE ACCUSED: Yeah. Could you possibly just put  
29 yourself in my shoes for a second and understand  
30 how compassionate I am about this country and how  
31 important it is to me that judges and their oaths  
32 are the absolute top pinnacle of our society and  
33 that we need fairness in judges. And I believe  
34 that you're an honourable man, I'm simply asking,  
35 and I've asked the Crown, I don't need to really  
36 ask you, I should be asking the Crown, and I have  
37 on two occasions, where are we, are we in a civil  
38 or criminal jurisdiction?

39 THE COURT: You're in a criminal court.

40 THE ACCUSED: I'm in a criminal -- okay.

41 THE COURT: You don't need to ask the Crown.

42 THE ACCUSED: We're getting somewhere.

43 THE COURT: You're in criminal court.

44 THE ACCUSED: Well, the Crown's brought forward  
45 charges.

46 THE COURT: That's right.

47 THE ACCUSED: They could have been civil.

## Proceedings

1 THE COURT: No. When they're filed in the manner that  
2 they're filed --

3 THE ACCUSED: Okay.

4 THE COURT: -- it's a charge under the --

5 THE ACCUSED: Yeah. So --

6 THE COURT: And I tried telling you at the beginning,  
7 under s. 238(1) of the *Income Tax Act*.

8 THE ACCUSED: Right. So those are --

9 THE COURT: And when those charges are brought --

10 THE ACCUSED: Those are criminal charges.

11 THE COURT: -- they are criminal.

12 THE ACCUSED: Okay.

13 THE COURT: They're not criminal in the sense of under  
14 the *Criminal Code*, it's under the *Income Tax Act*,  
15 but it is a criminal charge.

16 THE SHERIFF: Turn your phone off, please.

17 THE ACCUSED: Yeah, hold on. Sorry. Sorry. Sorry.

18 THE SHERIFF: I've told you once already.

19 THE ACCUSED: I did turn it off. I thought it was off,  
20 I really did. I -- I really apologize for that.  
21 I thought I just turned that off. Let's see if  
22 it's off.

23 THE COURT: You're in criminal court and we're about to  
24 hear the evidence of the Crown. You'll be  
25 entitled to --

26 THE ACCUSED: Okay. So we're in criminal court --

27 THE COURT: -- to cross-examine any of the Crown  
28 witnesses. At the end of the day when the Crown  
29 has closed their case and you've -- and you're  
30 done with the cross-examining of their witnesses,  
31 then I'll turn to you and ask you whether you're  
32 intending to call any evidence, or not.

33 With regards to evidence from the Crown --

34 THE ACCUSED: No, I --

35 THE COURT: -- cross-examination from you, evidence --  
36 potential evidence from you, and potential cross-  
37 examination from the Crown, on all of those  
38 things, of course, as the trier of facts, I'm only  
39 going to allow it to happen if it's relevant to  
40 the charges.

41 THE ACCUSED: Criminal charges under the *Income Tax*  
42 *Act*?

43 THE COURT: That's correct.

44 THE ACCUSED: I'm just wondering how that works.

45 THE COURT: Well, I think you're about to find out.

46 THE ACCUSED: I'd like to find out --

47 THE COURT: And if you really don't know --

**Proceedings**

1 THE ACCUSED: I'd like to find out the rules --  
2 THE COURT: -- you're in front of a judge and you  
3 understand the way it finds out is that if you're  
4 guilty, that there are all kinds of consequences  
5 that can happen here. If you're found to be not  
6 guilty -- because you are innocent until proven  
7 guilty, if you're innocent, then you'll walk away  
8 from this at the end of the day. But if you're  
9 found guilty, then you're going to get sentenced  
10 and I think you have a really good idea of what  
11 some of those potential penalties are.  
12 THE ACCUSED: I --  
13 THE COURT: But I'm not your lawyer in this matter.  
14 THE ACCUSED: I don't have a lawyer, sir.  
15 THE COURT: I'm your -- that's correct.  
16 THE ACCUSED: Right.  
17 THE COURT: And I am about to embark on the trial. I'm  
18 going to -- the whole focus is whether or not you  
19 were served with the notice that they claim they  
20 served on the 30th of January, 2019, and whether  
21 you did or did not comply with that notice.  
22 That's right at the heart of what this is about.  
23 THE ACCUSED: Yeah, January 30th, 2019, correct.  
24 THE COURT: Well, that's what the Information says.  
25 THE ACCUSED: Yeah.  
26 THE COURT: I don't know anything about this case,  
27 other than, as you can, reading the Information.  
28 That's what it alleges.  
29 THE ACCUSED: Yeah. Now, I understand that.  
30 THE COURT: You're innocent until proven guilty.  
31 THE ACCUSED: Okay.  
32 THE COURT: If they don't prove it, you walk away  
33 innocent.  
34 THE ACCUSED: Right. Okay.  
35 THE COURT: Right?  
36 THE ACCUSED: Can I -- can I say a couple things?  
37 THE COURT: What?  
38 THE ACCUSED: I've not received disclosure from the  
39 Crown.  
40 THE COURT: You did say that earlier, and I do intend  
41 to address that issue before commencing the trial.  
42 THE ACCUSED: Second thing --  
43 THE COURT: Out of everything you said, that was the  
44 one thing that I've made a mental note of that I  
45 do need to address.  
46 THE ACCUSED: And I do -- I've had no disclosure, I've  
47 been here three times. The other things that I

## Proceedings

1           need --  
2 THE COURT: Just pause. Just pause.  
3 THE ACCUSED: Thank you.  
4 THE COURT: What is the Crown response to his claim  
5           that they -- that he's received no disclosure?  
6 MR. LEPINE: Well, on an earlier occasion, my  
7           colleague, Mr. Yates [phonetic], provided Mr.  
8           Merrill with disclosure.  
9 THE ACCUSED: Steven.  
10 MR. LEPINE: He refused to accept it and simply dropped  
11           it on the ground. The Crown mailed it to his  
12           home, he did not pick it up. I believe on a  
13           separate occasion a sheriff followed him and tried  
14           to give him the disclosure. If he does not have  
15           disclosure today, it's because he has refused to  
16           accept it, in the Crown's view, to frustrate the  
17           process.  
18 THE COURT: And Mr. Merrill, what's being alleged is  
19           that it was handed to you, but you were refusing  
20           to accept it.  
21 THE ACCUSED: Well, there was -- again, there was no  
22           judge operating on -- on --  
23 THE COURT: No.  
24 THE ACCUSED: -- her oath that day, and I was here -- I  
25           wasn't even in here.  
26 THE COURT: So you're saying you were here at the time  
27           that it was given, you saw this happen?  
28 THE ACCUSED: No, I'm saying on December 5th when I was  
29           here, there was a third lawyer, his name was  
30           Dominic Maio, and he tried also to provide  
31           disclosure here. And I did tell him that he could  
32           put the disclosure in the mail, but I -- I found  
33           that funny because when I was served with the  
34           initial summons on October 30th, the RCMP knew  
35           exactly where I was, in my office, right here in  
36           Kelowna.  
37 THE COURT: Merrill -- Mr. Merrill, you have an  
38           incorrect understanding of what service means.  
39 THE ACCUSED: No, I don't.  
40 THE COURT: Service doesn't mean that you -- understand  
41           that it does not mean that you touch it. If they  
42           give it to you and drop it at your feet and you  
43           choose to walk away from it, you've been served.  
44           That's good service.  
45 THE ACCUSED: Hmm.  
46 THE COURT: Okay? So I don't --  
47 THE ACCUSED: I don't have -- I don't have to admit --

**Proceedings**

1 do I not have to admit I'm Steven Merrill?  
2 THE COURT: I dismiss your application for claiming  
3 that you weren't given notice. Let's move on with  
4 the trial.  
5 THE ACCUSED: Okay. The second thing before -- if I  
6 can, before we move on, is that the filings, the  
7 missing T1 filings were done on January 15th.  
8 THE COURT: Well, if they were --  
9 THE ACCUSED: -- and I don't believe -- I don't believe  
10 the court --  
11 THE COURT: If they were, then that will be coming out  
12 on the evidence. That's something that will be  
13 addressed in the evidence. You can put a question  
14 to the witness and say, "Isn't it true that they  
15 were actually filed on January 15th," and that's  
16 good ground for questioning the witnesses, okay,  
17 but that's not something that's pre-hearing the  
18 evidence that I get involved with, that's  
19 something right in the middle of the evidence that  
20 will come up.  
21 THE ACCUSED: Can I request, then, because I've not  
22 seen disclosure, about a half-hour recess so I can  
23 at least have a look at what is in there?  
24 THE COURT: Well, they're saying that they tried giving  
25 you --  
26 THE ACCUSED: I have -- I have no idea.  
27 THE COURT: -- a full package of disclosure and you're  
28 refusing to take possession of it.  
29 THE ACCUSED: No, I -- I said -- I said they could mail  
30 it, and they know exactly where I am in the  
31 office.  
32 THE COURT: He -- it's not your option on whether they  
33 can mail it when they're right there and they're  
34 handing it to you and you let it drop, you're  
35 served with it, whether you choose to read it, or  
36 not. That's your problem.  
37 THE ACCUSED: Okay, I've got it. Can I please request  
38 a half-hour recess to look at it?  
39 THE COURT: Yes, you can.  
40 THE ACCUSED: Excellent.  
41 THE COURT: Go look at it. We'll come back in  
42 30 minutes.  
43 THE ACCUSED: Could I possibly ask that you read the  
44 entire affidavit?  
45 THE COURT: I'm going to look at it, that's for sure.  
46 THE ACCUSED: Excellent.  
47

## Proceedings

1 (PROCEEDINGS ADJOURNED)  
2 (PROCEEDINGS RECONVENED)  
3  
4 THE CLERK: Court reconvenes, Your Honour. Steven  
5 Merrill, Courtroom 7, please.  
6 THE ACCUSED: Sir, before -- just stating, Your Honour,  
7 for the record, again, that I'm a man acting in my  
8 capacity as the legal representative for the  
9 taxpayer.  
10 I'd like to bring a couple of things up,  
11 unless you'd like to speak first?  
12 THE COURT: Well, we stood down so that you could read  
13 some of the disclosure particulars.  
14 THE ACCUSED: Yeah, I --  
15 THE COURT: If you have some general comment, I would  
16 listen.  
17 THE ACCUSED: Okay. Thank you. Judge Smith, you said  
18 to me that this matter is a criminal matter,  
19 correct?  
20 THE COURT: I -- it's not under the *Criminal Code*, but  
21 it's --  
22 THE ACCUSED: No.  
23 THE COURT: -- it is equivalent of a criminal matter  
24 because you're in a criminal court setting, okay?  
25 THE ACCUSED: I'm in a Provincial Court setting, am I  
26 not?  
27 THE COURT: And you don't think Provincial Court deals  
28 with criminal matters? The Provincial Court deals  
29 with about 95 percent of criminal trials, okay,  
30 so --  
31 THE ACCUSED: Well, I understand there's civil  
32 courts --  
33 THE COURT: Sir, no, you're not --  
34 THE ACCUSED: -- and criminal courts.  
35 THE COURT: We're not going down this rabbit hole  
36 again. I thought you might have something of  
37 substance you wanted to ask me, but if you don't,  
38 then let's get on with it.  
39 THE ACCUSED: I have -- I have a couple of things.  
40 THE COURT: Well, I haven't heard anything of  
41 sustenance -- of substance yet. Tell me something  
42 of substance that you would like to ask and I'll  
43 listen.  
44 THE ACCUSED: Okay. I'll refer you, then, on my  
45 affidavit, to point 38.  
46 THE COURT: What's your point?  
47 THE ACCUSED: On or about January 15th, 2020, growing



**Proceedings**

1           tired and frustrated with the seemingly obtuse  
2           nature of the Crown's position, and with a busy  
3           travel schedule ahead, affiant did, myself, I'm  
4           the affiant, I'm the man, did complete and send  
5           the four T1 income tax returns on behalf of the  
6           taxpayer account 634981708. The documents were  
7           sent Canada Post registered.

8   THE COURT: Okay. You're getting into evidence now.

9   THE ACCUSED: 448 --

10   THE COURT: And that's the whole purpose of this trial,  
11           is whether you did or didn't.

12   THE ACCUSED: I just --

13   THE COURT: And I'm not going to --

14   THE ACCUSED: When --

15   THE COURT: -- address that in advance of the trial.

16   THE ACCUSED: I guess my question is what is the charge  
17           if the filings have been made?

18   THE COURT: They claim that proper filings have not  
19           been made so I'll hear the evidence in that  
20           regard.

21   THE ACCUSED: I think they're claiming that the filings  
22           haven't been made. The filings have been made.

23   THE COURT: Mr. Merrill, that's a point of evidence.  
24           When I hear the evidence, if I don't hear about  
25           proper filings having been made, then of course  
26           you would get acquitted if proper -- you know, if  
27           the proper filings have been made. If they  
28           haven't, you could have some problems here so it's  
29           -- that a question of evidence --

30   THE ACCUSED: The filings have been made.

31   THE COURT: -- in the trial. Sir, what's your other  
32           point because this one's going nowhere that you're  
33           doing now.

34   THE ACCUSED: Well, I think that's a big point.

35   THE COURT: It's a big point for the trial, it's not a  
36           big point for pretrial.

37   THE ACCUSED: Okay. The cover letter from LeDressay is  
38           dated after the filings were made. The second  
39           thing I'll say is been there's -- there's been no  
40           plea entered on this matter.

41   THE COURT: Well, I'm about to address that before we  
42           would start hearing any witnesses. You make a  
43           good point there. I'm about to address that part  
44           of it.

45   THE ACCUSED: Okay.

46   THE COURT: I agree with you that that's a big point.

47   THE ACCUSED: Yeah, it's a pretty big point.

**Proceedings**

1 THE COURT: Yes.

2 THE ACCUSED: The last point, just quickly, is the file  
3 number on the LeDressay cover letter is different  
4 from the file number on the summons.

5 THE COURT: Sir, you're again making points of  
6 evidence.

7 THE ACCUSED: Well, that's --

8 THE COURT: You can ask these questions of a witness in  
9 a trial, you know, the evidentiary things I'm not  
10 going to address prior to -- you know, that's part  
11 of the trial, that's what the trial is for, is to  
12 see whether the Crown can prove their case, or  
13 not.

14 THE ACCUSED: But before trial, do we not have to be  
15 dealing with the right file numbers?

16 THE COURT: Sir --

17 THE ACCUSED: There's two different file numbers here.

18 THE COURT: -- I don't know what the right filing  
19 numbers are until I hear the evidence, okay?

20 THE ACCUSED: Well --

21 THE COURT: So no, we don't have to --

22 THE ACCUSED: -- I can show you right here.

23 THE COURT: Sir, no. No. No. No. No. In answer of  
24 your question, no.

25 THE ACCUSED: No.

26 THE COURT: It's not relevant before the trial starts,  
27 it's only relevant when I hear the evidence and if  
28 you want to cross-examine someone about these  
29 kinds of things, you can do it during the trial,  
30 but not before the trial.

31 THE ACCUSED: Yeah, but there's been no plea entered  
32 here, and the file numbers are --

33 THE COURT: There might have been, I don't know. I'm  
34 going to address that as soon as you're done with  
35 your questions. I agreed with you that that's a  
36 big point. I agree.

37 THE ACCUSED: I come in honour, Mr. Smith, I do, Judge  
38 Smith. I have been very patient with the State in  
39 this case and I was really hopeful I could get  
40 some remedy here per the last point in my  
41 affidavit. And I did want to just, for the court,  
42 let you know that the filings have been made, as  
43 Crown has acknowledged they've been made. So if  
44 the charge is failing to file -- or failure to  
45 file and it says here in the statement from their  
46 witness, it says, "income tax" here, it doesn't  
47 say, "*Income Tax Act*," which is a bit odd.

**Proceedings**

1 THE COURT: Sir, you keep trying to argue points of  
2 evidence. I'll only address that after I've heard  
3 the evidence. I'm not, in advance of hearing the  
4 evidence, going to make rulings on the evidence.  
5 you can surely understand the logic of that. I  
6 can't do it --

7 THE ACCUSED: All right. And --

8 THE COURT: -- until I've heard the evidence.

9 THE ACCUSED: Can we acknowledge there's been no plea?  
10 You're going to address that now?

11 THE COURT: I can't acknowledge that yet. I'm about to  
12 as soon as you're done asking questions. I'm  
13 going to make some inquiries in that regard. The  
14 way that the law works is that if someone does not  
15 verbalize their plea before the court, then, by  
16 operation of law, a not guilty plea becomes  
17 recorded, okay? I'm not sure if that's what  
18 happened here, or whether no plea has been entered  
19 yet, and that's what I'm going to turn to Madam  
20 Clerk to ask her what the record of proceedings  
21 show with regard to any plea?

22 MR. LEPINE: Yes, Your Honour, I just wanted to clarify  
23 before pleas are entered that the Crown is  
24 proceeding summarily notwithstanding the words "by  
25 indictment" on the Information.

26 THE COURT: Okay. Just pause on that. So you  
27 understand that the Crown could proceed by  
28 indictment or summarily, and they're making it  
29 clear that they're proceeding summarily.  
30 What that means is is when it proceeds  
31 summarily, that there's no election in the matter  
32 to be judge and jury, judge alone, Provincial  
33 Court judge. When it's proceeded summarily, then  
34 the exclusive jurisdiction is in the Provincial  
35 Court.

36 THE ACCUSED: They're charging instrument says "by  
37 indictment" so if they're proceeding summarily,  
38 should not there be a new instrument?

39 THE COURT: No, there shouldn't.

40 THE ACCUSED: I see.

41 THE COURT: The same Information can be used, but I'm  
42 needing to -- what I am needing to hear from Madam  
43 Clerk is whether any plea has been recorded in  
44 this matter.

45 THE CLERK: No plea has been recorded yet, Your Honour,  
46 but it was noted on December 5th that the Crown  
47 was proceeding summarily.

**Proceedings**

1 THE COURT: Back then?  
2 THE CLERK: Yes.  
3 THE COURT: Yeah.  
4 THE ACCUSED: And there was --  
5 THE COURT: And that's okay, there's no problem.  
6 There's no technical problem in that regard, but  
7 not having a plea recorded, there is a problem in  
8 that regard, okay? That's a big issue and I was  
9 trying to confirm that with you earlier. So Mr.  
10 Merrill, the way this works, and I'll just say it  
11 a little bit more slowly one more time, but, you  
12 know, you can plead not guilty, or guilty. If you  
13 plead -- if you want to enter no plea, then what  
14 happens is by operation of law, the court directs  
15 that the not guilty plea be recorded. That's just  
16 the way it works, is that you don't avoid the  
17 court process simply by not saying anything with  
18 regards to a plea. Someone is innocent until  
19 proven guilty so the not guilty plea gets recorded  
20 in -- which is consistent with the presumption of  
21 innocence, right? That's what happens if you say  
22 nothing.  
23 And I was not clear in this case whether a  
24 plea had -- because I told you, I just came onto  
25 this file -- I wasn't clear whether the plea had  
26 been recorded yet by you having said "not guilty"  
27 or by way of the court just simply directing the  
28 not guilty plea to be recorded in the absence of  
29 you saying anything, right?  
30 THE ACCUSED: Right.  
31 THE COURT: And Madam Clerk is saying that what's  
32 happened here is that the plea has just simply  
33 never been recorded by anyone. And so that's a  
34 really important point and so if your plea is one  
35 of not guilty or guilty now is your opportunity to  
36 say. If you don't say either, then that's where I  
37 would then be directing that a not guilty plea be  
38 recorded, okay? So those are the three ways that  
39 this could play out.  
40 THE ACCUSED: So this -- is this an arraignment?  
41 THE COURT: Well --  
42 THE ACCUSED: Because I don't have a --  
43 THE COURT: -- to the degree that a plea hasn't been  
44 entered, you're exactly right.  
45 THE ACCUSED: I don't have a summons.  
46 THE COURT: You can plead -- there have been summons.  
47 You can plead -- you've even attached the summons

## Proceedings

1 in your documents about the 11 of September 2019  
2 summons to attend court on the 31st of October.  
3 So you know, you attached those in your own  
4 documents so you can say what you want, but you  
5 attached them in your documents. You were served,  
6 okay?

7 THE ACCUSED: I attached them because there's no seal  
8 on those documents.

9 THE COURT: Well, you can claim whatever problems there  
10 are or aren't with it, I'm asking you whether  
11 you're pleading not guilty or guilty. So you're  
12 right, that is an arraignment question that I'm  
13 asking you.

14 THE ACCUSED: Right now?

15 THE COURT: Right now.

16 THE ACCUSED: On what charges?

17 THE COURT: On the four counts that I referenced to you  
18 earlier.

19 THE ACCUSED: Do you want to read those again?

20 THE COURT: Sure. I'm going to summarize, first of  
21 all, that all four counts say exactly the same  
22 thing with one exception, they're referencing  
23 different tax years, okay? Like, the Count 1 is  
24 referencing tax year 2014, the Count 2, tax year  
25 2015, Count 3, tax year 2016, and Count 4, tax  
26 year 2017. But what the allegations on all four  
27 of these are is that on the 1st of May, 2019, you  
28 were served -- no, I misspeak there -- that on the  
29 30th of January, 2019, that you were served  
30 personally with notices to file your tax returns  
31 within the 30 days. I get that the information --  
32 I get even from your documents that there was  
33 further conversations after that, but the essence  
34 of the charges are that they had served you with  
35 notices to require you to file those returns, and  
36 that those had been served on you on the 30th of  
37 January, 2019, and that you did not timely file  
38 your notices -- your tax returns by the 1st of  
39 May, 2019, as required.

40 That's the gist of the charges. Failing to  
41 file your tax returns contrary to specific notice  
42 being given that you had to do it within a certain  
43 window of time.

44 THE ACCUSED: And there's a *Criminal Code* section  
45 there?

46 THE COURT: I didn't say *Criminal Code*. I never said  
47 *Criminal Code*.

## Proceedings

1 THE ACCUSED: Oh. Okay, I thought --  
2 THE COURT: I said a criminal court process.  
3 THE ACCUSED: Criminal jurisdiction.  
4 THE COURT: Because here we are in -- we're not in  
5 family court, we're not civil court, we're in the  
6 -- in a criminal court setting, but I didn't ever  
7 say *Criminal Code*, I've repeatedly said it's  
8 charges under the *Income Tax Act*, right? But the  
9 consequences are criminal in nature. I mean, for  
10 most things, people can't be sent to jail, or  
11 things like that, but for this, it is quasi-  
12 criminal in the sense that that's what some of the  
13 potential consequences are, right?  
14 So you are in criminal court right now on a  
15 *Income Tax Act* charge times four for the four tax  
16 years. And you can plead not guilty or guilty.  
17 And if you don't make any plea, then you put me in  
18 the position of having to enter -- have that plea  
19 entered on your behalf, and when I do that, it  
20 would be one of not guilty.  
21 THE ACCUSED: You're willing to do that?  
22 THE COURT: Well, I would prefer that you tell me  
23 whether you're pleading not guilty or guilty, but  
24 I'm telling you that if you don't do one or the  
25 other, that I will be willing to do that, yes.  
26 THE ACCUSED: Can I ask that we just break for half an  
27 hour so I can have a chance to review with counsel  
28 whether or not I plead guilty or not guilty? My  
29 counsel was not available to be here today. He's  
30 a -- a judge, believe it or not. I -- my question  
31 is pleading guilty, obviously, to income tax  
32 filings that have been remedied, or pleading not  
33 guilty --  
34 THE COURT: Well, look --  
35 THE ACCUSED: -- to income tax --  
36 THE COURT: -- if you're saying you're not guilty, "but  
37 I'm pleading guilty to get it over with," the  
38 courts don't accept those kind of guilty pleas.  
39 Like, every month in criminal court I have someone  
40 doing just that, they're saying, "I want to plead  
41 guilty to get this over with even though I didn't  
42 -- you know, wink wink nod nod -- I didn't really  
43 do it, but I'm tired of the process, I want to get  
44 it over with so I'm pleading guilty to get it over  
45 with."  
46 Well, any time anyone says anything like that  
47 to a judge, the judge says, "Well, no, you -- I

**Proceedings**

1           can't accept your guilty plea in those  
2           circumstances" and the not guilty plea then gets  
3           recorded by the judge because the judge can only  
4           accept a guilty plea if someone is acknowledging  
5           having committed the offence. And if it's not  
6           something that you're prepared to commit, then it  
7           really, at the end of the day, leaves it down to  
8           two options, one of a not guilty plea on your  
9           behalf, or you remaining silent and --

10 THE ACCUSED: The -- that you --

11 THE COURT: -- and me then having that not guilty plea  
12           recorded.

13 THE ACCUSED: Right.

14 THE COURT: But it also begs another big question here,  
15           and that's whether this trial is or isn't going to  
16           proceed today because you are absolutely right,  
17           this is an arraignment step and I'm a little bit  
18           surprised that the arraignment wasn't completed a  
19           long time ago. If it had been me in charge of it  
20           earlier on, I would have made sure that the  
21           arraignment was completed in this before the trial  
22           date.

23           If you plead not guilty today, I believe that  
24           I would then be in the situation of having to say,  
25           well, look, because the arraignment is just  
26           completing today, although Crown says they're  
27           ready to proceed to trial today, I would have to  
28           turn to you and say, "Are you ready to proceed  
29           today?" And if you were to say yes, well, then  
30           the trial would proceed today, but if you were to  
31           say no on that, then I would have to entertain  
32           whether I would then adjourn the matter to a later  
33           date for the trial because you are absolutely  
34           correct that we are talking about an arraignment  
35           step that hasn't been completed yet. And to me,  
36           that's the only fair way to look at that.

37           And so if you're saying that you're needing  
38           more time to prepare for a trial if you're to be  
39           pleading not guilty, you probably would win that  
40           argument. Your friend would probably try to  
41           convince me otherwise, but on the other hand, I  
42           don't understand why this arraignment wasn't  
43           completed a long time ago. It should have been.

44 THE ACCUSED: Well, there's --

45 THE COURT: Things haven't gone easy with your matter.  
46           That might be part of it. I don't mean that in  
47           any negative way, but it's a bit of production,

**Proceedings**

1 right, the way this has played out. But that's --  
2 I need to hear from you whether you're pleading  
3 not guilty or guilty, or just maintaining silence.  
4 If you're saying that you really want just a  
5 little bit more time to speak with someone before  
6 you make up your mind whether you enter a plea or  
7 whether you remain silent in circumstances where  
8 you know what the outcome of that will be, it will  
9 be me entering a not guilty plea for you.

10 THE ACCUSED: Don't I need a summons on which to enter  
11 a plea with a file number on it, with a name on  
12 it, and with a seal on it from the Province, or  
13 Canada, if this is criminal?

14 THE COURT: I know you're wanting to argue absence of  
15 jurisdiction. You make that --

16 THE ACCUSED: Oh, no, I'm just -- I'm looking --

17 THE COURT: -- clear with your materials.

18 THE ACCUSED: -- for clarity. I'm looking for clarity  
19 on the jurisdiction.

20 THE COURT: But I'm telling you no. This  
21 Information --

22 THE ACCUSED: I don't know what "quasi-criminal" means.

23 THE COURT: This Information that was sworn on the 11th  
24 of September 2019 is a binding Information. Yes,  
25 it did use the words "by Indictment" at the top,  
26 but when it comes to court, often, in these  
27 circumstances, the Crown will say, "Oh, no, you  
28 know, while it said those words, "by Indictment,"  
29 we're going to proceed in a lesser way,  
30 summarily." That's not a negative thing for you,  
31 that's a positive thing.

32 THE ACCUSED: Well, he just said "summarily."

33 THE COURT: That's right. That's a positive thing for  
34 you.

35 THE ACCUSED: That says "by Indictment." Right.

36 THE COURT: To proceed summarily is a positive thing  
37 for you, not a negative. It's not any reason --  
38 that's no reason to be going out and getting some  
39 adjournment, right? It's a positive thing for  
40 you, not a negative. But the fact that no plea's  
41 been recorded here, that's pretty big -- that's a  
42 big point. Under everything that's been said,  
43 that's huge, right, that no plea has been recorded  
44 yet. I don't know how it played out that way. It  
45 should have been brought in front of a judge a  
46 long time earlier.

47 THE ACCUSED: I tried.



## Proceedings

1 THE COURT: Well --  
2 THE ACCUSED: I've tried --  
3 THE COURT: -- I'm not trying to say who's tried what.  
4 I don't -- I'm not wanting to get behind that now,  
5 but I'm just saying it's problematic with someone  
6 who is self-represented to complete the  
7 arraignment and say, "Oh, by the way, now you're  
8 forced, if you've pled not guilty, to start your  
9 trial today." I'm not going to do that that way  
10 because that I don't think would be fair, okay?  
11 You need to appreciate I'm no agent for you, I'm  
12 no agent for the Crown here.  
13 THE ACCUSED: Yeah, that's the way I understood it.  
14 THE COURT: Well, the way you understood it about the  
15 arraignment part, or about me being an agent for  
16 the Crown?  
17 THE ACCUSED: No, about -- about your role, an  
18 impartial role.  
19 THE COURT: No, well, I am impartial.  
20 THE ACCUSED: Okay.  
21 THE COURT: And that's why I'm independent and  
22 impartial because half the time the cases that I  
23 hear, the Government of Canada is on one side of  
24 it and some individual is on another side of it,  
25 right? So how can I be, you know, any more, you  
26 know, beholden to them than I would be to you?  
27 THE ACCUSED: Right.  
28 THE COURT: Right? Well, the --  
29 THE ACCUSED: Well, it just brings me back to the  
30 judge's oath. And to be honest, I mean --  
31 THE COURT: Well, look --  
32 THE ACCUSED: -- because the -- is it the --  
33 THE COURT: -- if it makes you feel any -- I'm not  
34 going to go deeper into this. I'm not going down  
35 this rabbit hole, but if it makes you feel any  
36 better, I will confirm with you that I have taken  
37 that oath. Oh, my goodness, it was so many years  
38 ago, that I've been a judge for 25 years now,  
39 right, but, yes, of course, I've done all of that.  
40 THE ACCUSED: You've --  
41 THE COURT: And I am --  
42 THE ACCUSED: You -- you took an oath to Her Majesty --  
43 THE COURT: I'm not going to get into those kind of  
44 rabbit hole questions that you're trying to ask  
45 me. I'm telling you I am under oath to --  
46 THE ACCUSED: To --  
47 THE COURT: -- discharge my duties properly, right, and

## Proceedings

1 I -- as I said earlier, that's just something you  
2 have to accept because if you choose not to, I  
3 mean, I'm the one sitting here with the -- in the  
4 courtroom with the sheriffs at my beckon.  
5 THE ACCUSED: Mm-hmm.  
6 THE COURT: I mean, that's a pretty good indicator that  
7 I do have that authority, right?  
8 THE ACCUSED: I'm -- I'm the one -- I'm the one being  
9 threatened with jail time of all things after --  
10 THE COURT: Well --  
11 THE ACCUSED: -- four filings were made. And you know  
12 what --  
13 THE COURT: I'm not addressing whether filings have or  
14 haven't been made. That's what I would hear in  
15 the evidence. You keep wanting to jump to the  
16 evidence part. I'm not going to hear that now.  
17 THE ACCUSED: Well, I think it's relevant.  
18 THE COURT: I can only hear that once the trial starts.  
19 THE ACCUSED: I think we could all go home because the  
20 filings have been made and, apparently, the  
21 charges are failure to file so --  
22 THE COURT: No, they're -- they're not. It's not that  
23 simple. It's charges of failing to properly file,  
24 right?  
25 THE ACCUSED: I don't think that's the --  
26 THE COURT: Well --  
27 THE ACCUSED: -- the wordage. Maybe we'd better read  
28 that back.  
29 THE COURT: You'll find out with this trial process.  
30 THE ACCUSED: Failing to file properly is now the  
31 charge?  
32 THE COURT: To properly file, sure.  
33 THE ACCUSED: I need a summons before I can make a --  
34 THE COURT: If someone draws a --  
35 THE ACCUSED: I don't know that --  
36 THE COURT: -- a painting of their favourite cat and  
37 hands it in, that's not a filing -- a proper  
38 filing, okay? I'm not saying that's what you did  
39 here, but I'm just saying of course it has to be  
40 some proper filing. And whether you did or  
41 didn't, that's for the evidence to decide.  
42 THE ACCUSED: Okay.  
43 THE COURT: I'm not going to address that now.  
44 THE ACCUSED: I would like a summons, then --  
45 THE COURT: No.  
46 THE ACCUSED: -- so I can enter a plea --  
47 THE COURT: No. No. No.

## Proceedings

1 THE ACCUSED: -- on failing to properly file. I don't  
2 know what section of the *Criminal Code* we're  
3 dealing with here.

4 THE COURT: Well, you do know, and I've told you about  
5 four times, and I'm now going to tell you the  
6 fifth time, s. 238(1) of the *Income Tax Act* in  
7 reference to s. 231.2 of the *Income Tax Act*.

8 THE ACCUSED: Which says?

9 THE COURT: Well --

10 THE ACCUSED: Failure to file properly?

11 THE COURT: -- I don't have it in front of me right  
12 now, okay? I don't -- I can't have a memory of  
13 those, that's what the trial process addresses.

14 THE ACCUSED: Can we look it up?

15 THE COURT: I do know the sections are referencing --  
16 it's not just simply that you've failed to file  
17 tax returns, it's that you --

18 THE ACCUSED: I haven't. I haven't.

19 THE COURT: -- it's that you failed to file them after  
20 receiving a particular notice, okay?

21 THE ACCUSED: No, I chose to file them.

22 THE COURT: Okay. You're trying to ask what you're  
23 charged with, and I keep trying to tell you what  
24 these sections are addressing. That's what you're  
25 charged with, was after having received this  
26 specific notice, which is a step up from just  
27 failing to file, failing to file after having been  
28 given a specific notice. We're all --

29 THE ACCUSED: I thought the charges were 238(1),  
30 failure to file.

31 THE COURT: 238(1) and also 231.2, it references both  
32 sections.

33 THE ACCUSED: I haven't seen that.

34 THE COURT: Well --

35 THE ACCUSED: Is that on the indictment?

36 THE COURT: -- if you look at the Information, you'll  
37 see that's what each count says.

38 THE ACCUSED: That's on the indictment?

39 THE COURT: Well, I shouldn't use the word  
40 "indictment" --

41 THE ACCUSED: Is there --

42 THE COURT: -- because they're not proceeding by  
43 indictment, but it says on the Information --

44 THE ACCUSED: Well, how are they proceeding, summarily,  
45 so where's the notice that says they're proceeding  
46 summarily?

47 THE COURT: They've given it to the court earlier

## Proceedings

1           and --  
2   THE ACCUSED:  And not to me?  
3   THE COURT:  They say that they did because they gave it  
4           in the open court, right?  
5   THE ACCUSED:  Well, I -- I'm looking --  
6   THE COURT:  When you were there.  
7   THE ACCUSED:  -- looking at this -- I'm looking at  
8           this --  
9   THE COURT:  But regardless, it's not a big issue  
10           because you're clear on that now --  
11  THE ACCUSED:  I'm looking at this now.  
12  THE COURT:  -- that they're proceeding summarily.  All  
13           that means is you don't have an election to deal  
14           with it in -- you know, judge and jury in Supreme  
15           Court, Supreme Court justice alone.  It means that  
16           the only option is for it to be dealt with in  
17           Provincial Court, which is where you are right  
18           now, I'm a Provincial Court judge, right?  
19  THE ACCUSED:  But criminal jurisdiction, or quasi-  
20           criminal jurisdiction?  
21  THE COURT:  Well, I have criminal jurisdiction, I have  
22           quasi-criminal jurisdiction, right, and this, I  
23           would say, falls under quasi-criminal.  What I  
24           mean by quasi-criminal is that it has some of the  
25           same kind of consequences that a criminal case  
26           could have, right, when under the *Criminal Code*.  
27           You could say the same thing about drug  
28           charges.  That's not under the *Criminal Code*, but  
29           no one would suggest that drug charges aren't  
30           criminal, quasi-criminal in nature, right, because  
31           there are significant consequences that can happen  
32           when someone --  
33  THE ACCUSED:  Are there rules of procedure --  
34  THE COURT:  Well, it's not under the *Criminal Code*,  
35           it's under --  
36  THE ACCUSED:  Okay.  Are there rules of procedure --  
37  THE COURT:  -- it's under --  
38  THE ACCUSED:  Are there rules of procedure for quasi-  
39           criminal matters?  
40  THE COURT:  Yes.  
41  THE ACCUSED:  Where are they?  
42  THE COURT:  I'm not your lawyer, I'm not going to go  
43           into all that detail with it now, but if you  
44           seriously would have a lawyer in this, of course,  
45           I would be happy if you would do that.  
46  THE ACCUSED:  I've got a judge on the end of the phone  
47           and I'm dying to talk to him here.

**Proceedings**

1 THE COURT: Sir, you don't have a judge on the end of  
2 the phone, you need to have a lawyer here in the  
3 courtroom. If you have someone who was --  
4 THE ACCUSED: No, I -- he's --  
5 THE COURT: -- formerly a judge that wants --  
6 THE ACCUSED: He's a former judge, counsel that I  
7 talked to.  
8 THE COURT: -- that wants to be counsel for you, then  
9 that's your call on whether they come here and  
10 they're your lawyer, but I don't have anyone here  
11 in front of me now. So you throwing that out to  
12 me now means nothing to me. If I see the whites  
13 of the eyes of someone here in the court  
14 representing you that says that they're -- you  
15 know, that they're a lawyer that's duly licenced  
16 to practice here, or that -- you know, asking  
17 permission of the court to be able to represent  
18 you in the matter, then I would address that when  
19 that issue comes, but that's not before me right  
20 now so I'm not going to knock down strong men,  
21 until it's in front of me, I'm not going to  
22 address that issue.  
23 THE ACCUSED: All I meant by that was I'd like to call  
24 him and confirm his guidance on how to plea to  
25 charges of failure to file when the filings have  
26 been made in a quasi-criminal matter, and I'd like  
27 to ask him where are the rules of procedure for  
28 quasi-criminal matters.  
29 THE COURT: You can ask him whatever questions you  
30 want, that's between you and your lawyer.  
31 THE ACCUSED: Then I would know. Then I would know,  
32 yes.  
33 THE COURT: Okay.  
34 THE ACCUSED: So I'm just asking for a recess so I can  
35 get to that. And I'm very -- I'm very confused.  
36 THE COURT: But what we're not going to do is go beyond  
37 today without some type of plea being entered one  
38 way or the other.  
39 THE ACCUSED: I'm happy --  
40 THE COURT: Okay, because we can't -- because that's  
41 what's slowing this down right now so the  
42 arraignment's going to be completed today, and I'm  
43 okay with giving you a bit more time --  
44 THE ACCUSED: Okay.  
45 THE COURT: -- if you think you want to get some more  
46 summary advice in that regard, but we have to get  
47 the arraignment stage of this totally completed so

## Proceedings

1           that I can then know whether it's a not guilty  
2           plea or a guilty plea, or silence, which I'm okay  
3           if that's what you do. And if you tell me you're  
4           going to remain silent on it, I'm acceptable of  
5           that, right?

6   THE ACCUSED: You know what, I don't remain silent.  
7           I've written a lot of information and it's taken  
8           me a lot of time.

9   THE COURT: Well, you make a good point in that regard,  
10           sir. I say that with a smile on my face, but --

11   THE ACCUSED: There's a lot of information and it's  
12           cost me a lot of time and it's taken me away from  
13           a business, and I'm really just seeking remedy  
14           here. The filings --

15   THE COURT: If I --

16   THE ACCUSED: The filings have been made. Now you're  
17           asking me to plea on a quasi-criminal matter  
18           without a summons so I'd like --

19   THE COURT: Yeah, well, I --

20   THE ACCUSED: -- I'd like to request a recess.

21   THE COURT: Yeah, and I'm telling you over and over  
22           again that, no, that you are properly before the  
23           courts on this matter and I'm not going to get  
24           involved in whether you think you should get  
25           another summons, or not. It's not playing out  
26           that way. Okay. You -- listen carefully to what  
27           I'm saying on that. You're being -- you're before  
28           the courts. You need to complete the arraignment  
29           by way of not guilty or guilty, or remaining  
30           silent, and I am okay with standing this down a  
31           bit longer for you to decide which of those three  
32           things you're going to do, silence, not guilty, or  
33           guilty.

34   THE ACCUSED: I like --

35   THE COURT: And I've told you that even if you were to  
36           plead guilty, I will only accept that guilty plea  
37           if you're then saying -- are you pleading guilty  
38           because you're acknowledging committing the  
39           offences, and if you're unable to confirm that  
40           with me, then I'll not allow the guilty plea to be  
41           recorded, and I would then record a not guilty  
42           plea.

43   THE ACCUSED: On --

44   THE COURT: So that's the way this is going to play  
45           out, okay?

46   THE ACCUSED: On behalf of the person?

47   THE COURT: On behalf -- that's -- because that's my

## Proceedings

1 job, to do that, that's -- and so what I am going  
2 to do now is stand this down until -- I'll give  
3 you between now and the afternoon, right, and come  
4 back at two o'clock and it's really  
5 straightforward then. It's not any speeches by  
6 you, I don't want to hear that then, I just want  
7 to know whether you're -- I'm going to ask you  
8 from an arraignment point of view whether you're  
9 pleading not guilty or guilty. And like I say, if  
10 you say guilty, then I'm going to get you to  
11 confirm on the record that you -- that you're  
12 doing that for the proper reasons, right, that  
13 because you're acknowledging guilt.

14 If you're pleading not guilty, I'll simply  
15 ask you whether you're prepared for the trial to  
16 proceed today, or not. If you say yes, I'll start  
17 with the trial. If you say no, I'll likely  
18 adjourn this matter to give you more time to get  
19 ready for the trial, okay? That's the way that  
20 part will play out.

21 And then the third scenario I keep telling  
22 you is that you can just tell me that you choose  
23 to remain silent, and just tell me that, right,  
24 that you're choosing to remain silent or you can  
25 even tell me that by not saying anything, you  
26 know, whichever method that you don't confirm,  
27 then I'm just going to direct that a not guilty  
28 plea is going to be recorded, and then I'll still  
29 ask you the same question of are you ready to  
30 proceed to trial today. And if you say no, you  
31 need more time, I would likely adjourn it to a  
32 time when you could be better prepared for the  
33 trial.

34 THE ACCUSED: Be -- well, and --

35 THE COURT: But it's not about getting another summons  
36 because there is this Information in front of me  
37 that is binding you to respond to the completion  
38 of the --

39 THE ACCUSED: The binding --

40 THE COURT: -- of the arraignment here, okay?

41 THE ACCUSED: Of the arraignment. Okay. So for the  
42 record, the "by indictment" document that I have  
43 here is the document --

44 THE COURT: Well, it's --

45 THE ACCUSED: -- outlining the charges?

46 THE COURT: It's the document that says "Information."  
47 The very top word on it is "Information."

## Proceedings

1 THE ACCUSED: Okay. But below, "by indictment"?  
2 THE COURT: Yeah. You -- the "by indictment" part has  
3 been withdrawn by the Crown. They're saying that  
4 they're not going by indictment, but it's still an  
5 Information and an Information doesn't become  
6 invalid. This is just the process by which  
7 they're saying they want to proceed, right, but it  
8 doesn't change --  
9 THE ACCUSED: But they're saying otherwise now?  
10 THE COURT: -- the Information.  
11 THE ACCUSED: They're saying otherwise now?  
12 THE COURT: They're saying that now, and evidently they  
13 said it at an earlier court date, too, because  
14 Madam Clerk was confirming with me that on some  
15 earlier date there that they recorded that the  
16 Crown was proceeding summarily. So it's not the  
17 first that they've said it, but you're right, they  
18 are saying it again today.  
19 THE ACCUSED: Why wouldn't I get a --  
20 THE COURT: And the importance of that, the only  
21 importance of that from your perspective --  
22 THE ACCUSED: Okay?  
23 THE COURT: -- is to know that now, because they're not  
24 proceeding by indictment, you don't have the  
25 option of a judge and jury trial or a Supreme  
26 Court justice trial, that the only option left is  
27 a Provincial Court matter. There's no other  
28 election in it, right, because they've proceeded  
29 summarily.  
30 THE ACCUSED: A summarily matter.  
31 THE COURT: You're in Provincial Court, and I'm a  
32 Provincial Court judge so you're in the right  
33 court for all of that part of it.  
34 THE ACCUSED: And quasi-criminal jurisdiction. Okay.  
35 Let's adjourn till 2:00, I'll --  
36 THE COURT: No, criminal and quasi-criminal, okay? I  
37 just -- when I say "quasi-criminal," I'm just --  
38 all I'm referencing with that is it's not under  
39 the *Criminal Code*. Some people think of criminal  
40 charges being stuff under the *Criminal Code* and  
41 I'm saying, obviously, this isn't under the  
42 *Criminal Code*, but that doesn't make it any less  
43 criminal in nature, the charges. It's not just a  
44 civil thing, is what I'm trying to tell you, it's  
45 one that has potential serious consequences for  
46 people that fail to comply, and you can get some  
47 legal advice on what those consequences are.



## Proceedings

1 THE ACCUSED: Can I ask you just quickly, is there a  
2 victim in a quasi-criminal matter?

3 THE COURT: Am I a victim?

4 THE ACCUSED: No, no, no, is there one? Like, in a  
5 criminal matter, from what I understand, there's  
6 always a victim.

7 THE COURT: Yeah, there is -- there's always a victim  
8 in every crime, and the victim would be the  
9 citizens of this Province that --

10 THE ACCUSED: No, in a quasi --

11 THE COURT: -- that end up filing and paying their  
12 taxes and other people don't. So yeah, there is  
13 definitely victims in a matter like this.  
14 We're down until two o'clock for you to come  
15 back with your arraignment.

16 MR. LEPINE: Okay, Your Honour, I just would like to  
17 point out that Mr. Merrill's first appearance was  
18 on October 31st. He's had months to seek legal  
19 advice and apparently has chosen not to do that.  
20 I would be unfortunate if people could get their  
21 trials adjourned simply by refusing to prepare for  
22 trial.

23 THE COURT: Well, I would agree that that would be  
24 unfortunate, but I would also state that it's  
25 unfortunate that no plea has been recorded before  
26 today's date. Like, the arraignment hasn't been  
27 completed, that's not a good practice.

28 MR. LEPINE: I would simply point out that  
29 [indiscernible] practice in Supreme Court, for  
30 example, that pleas are entered just before a  
31 trial start.

32 THE COURT: Well, it's not the practice in our court.

33 MR. LEPINE: I don't know what to say about that.

34 THE COURT: I do agree that in Supreme Court, they wait  
35 and then someone appears before the justice and  
36 they have their -- it's read out, where the person  
37 enters the plea, and then they go directly into  
38 the trial. I agree that that process happens.  
39 But when I'm dealing with an unrepresented accused  
40 where arraignment hasn't been completed, he might  
41 say he wants it to proceed today. He's got plenty  
42 to say here. You know, he might take that  
43 position, I don't know, but I'm just saying in  
44 Provincial Court, it -- with an unrepresented  
45 accused, in particular, generally speaking, we get  
46 the plea recorded long before the trial date.

47 MR. LEPINE: All right.

**Proceedings**

1 THE COURT: It's just the practice.

2 MR. LEPINE: And I'll have more to say on this point  
3 this afternoon.

4 THE COURT: Thank you.

5 THE ACCUSED: Thank you, Judge.

6

7 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

8 (PROCEEDINGS RECONVENED)

9

10 THE ACCUSED: Permission to come aboard, Judge Smith?

11 THE COURT: Yes, come aboard.

12 THE ACCUSED: Come aboard. Just for the record --

13 THE COURT: I'm not going to repeat everything that  
14 I've said a few times now, but --

15 THE ACCUSED: Well, it was -- it was hard to catch all  
16 that.

17 THE COURT: Well, yes and no. In the end, I think the  
18 part that you would have caught, because I said it  
19 so many times, is that the arraignment must be  
20 completed today and that completion of that means  
21 either hearing from you, you know, not guilty or  
22 guilty, or hearing silence from you on it, that I  
23 would then, given the presumption of innocence,  
24 direct that a not guilty plea be recorded. So  
25 it's one of those three options that we need right  
26 now. And so I'm trying to talk to you to ask how  
27 do you plead?

28 THE ACCUSED: And I'm looking for a summons that  
29 clearly spells out the charges, especially the  
30 charges of failure to file properly with a proper  
31 court number on them.

32 THE COURT: Okay.

33 THE ACCUSED: So can you read the charges and the file  
34 number, and everything, so we're clear on all  
35 that?

36 THE COURT: It is true that we haven't read it out  
37 loud. I've tried to, in a simpler terms, explain  
38 to you what those charges are and I've tried doing  
39 that a few occasions today, but I could have Madam  
40 Clerk read it out loud to you, or if you want to  
41 just physically look at it and read it yourself,  
42 which of those two methods would you prefer?

43 I mean, I think it's been provided to you now  
44 and you have a copy of the Information.

45 THE ACCUSED: Yeah, but my -- you know, I -- I'm not  
46 sure where we are here. I will -- I will accept  
47 the offer to plea to a new --

## Proceedings

1 THE COURT: Yeah, and that's not an option I'm giving  
2 you.  
3 THE ACCUSED: -- on a new -- on a new summons.  
4 THE COURT: And then that's not an option before me so  
5 if you're saying that that's the extent of your  
6 offer, then in the end, I'm going to take that  
7 as --  
8 THE ACCUSED: Well, no, you're --  
9 THE COURT: -- you not entering a plea.  
10 THE ACCUSED: It's your offer.  
11 THE COURT: No, I'm not offering anything.  
12 THE ACCUSED: You're offering me a plea.  
13 THE COURT: You're wanting to use the word "offer," and  
14 that's the problem I'm having with what you're  
15 saying. I'm not offering you anything. I'm  
16 asking you what is your plea in this matter, and  
17 you can tell the court so that it can be recorded  
18 -- you can tell the court not guilty, you can tell  
19 the court guilty, or you can, for whatever reasons  
20 you choose, not enter either of those two of not  
21 guilty or guilty, and then I am going to direct  
22 that a not guilty plea be recorded. Those are the  
23 three options. And I know you understand what I'm  
24 saying with that because, darn it anyhow, I've  
25 said it about 12 times now.  
26 THE ACCUSED: I don't understand the charges. You --  
27 you mentioned earlier that the charge was failure  
28 to file properly.  
29 THE COURT: No, don't -- you do know the charges. You  
30 have -- look, you have in hand a copy of the  
31 Information, right, that you have that document  
32 that's been provided to you?  
33 THE ACCUSED: The "by indictment" document?  
34 THE COURT: Well, it says "Information" at the top of  
35 it.  
36 THE ACCUSED: And then it says "by indictment"?  
37 THE COURT: It's not by indictment now, but it --  
38 THE ACCUSED: Well, can we change that, then?  
39 THE COURT: It doesn't matter.  
40 THE ACCUSED: It doesn't matter?  
41 THE COURT: Because it's been changed -- no, it's --  
42 what matters is what the court accepts. It  
43 doesn't matter what the Crown says. It doesn't  
44 matter what you're saying in that regard, it  
45 matters what the court accepts, and what the court  
46 has accepted is that the Crown is proceeding  
47 summarily. So it doesn't matter that it had the

## Proceedings

1 word "by indictment" on there. It's not  
2 proceeding by indictment. The Crown is proceeding  
3 summarily, okay?

4 THE ACCUSED: Okay [indiscernible].

5 THE COURT: So it's not relevant that that -- those two  
6 words are on that document, it's just not relevant  
7 given the Crown is not proceeding by indictment.

8 THE ACCUSED: That's what I have, "by indictment."

9 THE COURT: Okay. I'm going to ask you one last time,  
10 with the Information that's been provided to you,  
11 whether you're pleading not guilty or guilty?  
12 What's your response?

13 Okay. With your silence, I now direct that a  
14 not guilty plea be recorded.

15 The Crown says that they're prepared to  
16 commence the trial now. I told you earlier that  
17 if you're saying you're not prepared for the  
18 trial, I would likely consider an adjournment of  
19 this matter. The Crown said hold the phone, they  
20 wanted me to not so quickly adjourn it, they  
21 wanted me to proceed on it, but ultimately it's  
22 not their call or your call, you folks come to me  
23 and I have to make the call on whether it gets  
24 adjourned, or not. Are you seeking an  
25 adjournment?

26 THE ACCUSED: Yes.

27 THE COURT: Then let me hear from the Crown why is it  
28 they say I shouldn't do that, and then I'll make a  
29 ruling on whether there should or shouldn't be an  
30 adjournment, okay? So just have a seat right here  
31 and let me hear why the Crown says I shouldn't  
32 adjourn it.

33 THE ACCUSED: I'm just going to step back onto the  
34 ledge.

35 THE COURT: You --

36 MR. LEPINE: Well --

37 THE COURT: -- can be seated anywhere in the courthouse  
38 where you choose, that's fine.

39 THE ACCUSED: Yes.

40 THE COURT: Just so long as you can hear what's going  
41 on.

42 MR. LEPINE: It's not really a matter of Mr. Merrill  
43 needing more time to understand the Canadian  
44 justice system. The issue is that he refuses to  
45 accept the Canadian justice system and that's not  
46 likely to be cured by an adjournment so there's  
47 going to be more of the same.

**Proceedings**

1           He has refused to prepare -- according to  
2           him, prepare himself for this trial. That's not  
3           going to change. In the Crown's view, there's no  
4           reason whatsoever to reward this kind of  
5           behaviour. The purpose of the people that adopt  
6           these strategies are to defeat the administration  
7           of justice. And it's not an issue where someone  
8           needs an adjournment to prepare for trial, it's  
9           not going to change.

10           And if it's adjourned, the Crown expects  
11           he'll simply use that time to prepare more  
12           affidavits of the kind that was filed at the  
13           registry yesterday, unfortunately.

14   THE COURT: Thank you.

15   THE ACCUSED: Can I add one point?

16   THE COURT: Okay. Come forward so your voice can be  
17           recorded.

18   THE ACCUSED: Step back on? January 15th, the filings  
19           were sent to Winnipeg by registered mail. On  
20           January 21st, the four filings received in  
21           Winnipeg. On February 20 -- on February 10th, I  
22           advised, after a business trip, the Crown, Michael  
23           LeDressay, I've never met this man before, that  
24           the filings had been sent. On February 25th, two  
25           weeks later, he acknowledged that he had checked  
26           with the CRA and the filings had been received.

27   THE COURT: Okay. You're again trying to argue the  
28           merits of the case, and I'm -- I haven't commenced  
29           hearing from the witnesses in order to address the  
30           merits of the Crown's claim. I'm simply  
31           addressing right now whether there should or  
32           shouldn't be an adjournment. I've told you  
33           earlier I was leaning towards allowing an  
34           adjournment if you weren't ready for the trial in  
35           circumstances where the arraignment hadn't been  
36           completed when I'm dealing with an unrepresented  
37           accused. And I can tell you as a matter of  
38           practice, when I'm dealing with an unrepresented  
39           accused I would expect the arraignment to be  
40           completed long before the scheduled trial date in  
41           Provincial Court. That's just our practice.

42           Could it be that in some circumstances the  
43           trial could just go ahead? Yes, it could, but  
44           only if everybody is ready for it. Otherwise, the  
45           arraignment process in Provincial Court and the  
46           trial process don't happen on the same day.  
47           They're separate and arguments about how in

## Proceedings

1 Supreme Court the plea is confirmed on the day of  
2 trial, that's true, they are affirming that in  
3 circumstances where it had already earlier been  
4 recorded what the election was and the tentative  
5 date had been set. Here, I don't think it's ever  
6 been tentatively recorded what your plea was ever,  
7 because you've never said, even to this day,  
8 you're not entering a plea so that's why I am now  
9 -- that's why I've stepped in and entered the plea  
10 of not guilty consistent with the principle of  
11 innocent until proven guilty.

12 So in those circumstances, it would be wrong  
13 of me to insist that this trial proceed. There  
14 are some merits to what Crown is saying in that is  
15 this really going to change anything? I don't  
16 know. Time will tell, but you need the  
17 opportunity to know that this matter is going to  
18 come back for trial, but I'm not going to let it  
19 leave the room today until I know when that trial  
20 date is because I'm going to confirm it.

21 And you're saying over and over again you  
22 don't know what the Information says, but you have  
23 a copy of that in the materials that's just been  
24 given to you. And you keep wanting to say, "Oh,  
25 but it says the word "indictment" and it should be  
26 amended, the one I'm going to get." And I keep  
27 telling you over and over, no, it's not going to  
28 get amended. The Crown is proceeding summarily,  
29 that's what we recorded on the court records. So  
30 it's a summary proceeding where you didn't have an  
31 election, simply the plea -- that plea has now  
32 been recorded and I'm going to adjourn it for a  
33 trial date. I've got various trial dates that are  
34 potentially available so that you don't have to go  
35 back to the JCM's office and I can just adjourn it  
36 directly to the trial date now.

37 THE ACCUSED: Okay, but --

38 THE COURT: So it needs to be one of the four following  
39 days.

40 THE ACCUSED: Well, will there be a new summons?

41 THE COURT: No, there won't be any new summons, and you  
42 asking me that another 10 times isn't going to  
43 change the reality of what I've told you on this.

44 You have to deal with the here and now.

45 THE ACCUSED: Well --

46 THE COURT: The trial could go on June 19 --

47 THE ACCUSED: -- you've -- you've dealt with it.

**Proceedings**

1 THE COURT: -- July 3, July 13th, or July 29. Those  
2 are the four trial dates that could be made  
3 available.

4 MR. LEPINE: If I can just have one moment, please?  
5 I'm sorry, Your Honour, the first date was  
6 June 19th?

7 THE COURT: Well, one is June 19 --

8 MR. LEPINE: Yes?

9 THE COURT: -- and then the other three were in the  
10 month of July, either 3, 13 or 29. Those are the  
11 four dates that the judicial case manager says  
12 that she could make available.

13 MR. LEPINE: Yes, now all four dates work with the  
14 Crown. Now, in this particular circumstance, so  
15 as the Crown can proceed by filing affidavits, the  
16 gentleman from Surrey who swore to these  
17 affidavits is not available on July 3rd, if he  
18 were to be cross-examined.

19 THE COURT: Well, then I think we should not use that  
20 date, if it's not available. So whether it's  
21 June 19 or July 13, let's zero in on those two  
22 dates.

23 MR. LEPINE: Both are fine with the Crown, and any  
24 Crown witness.

25 THE COURT: So Mr. Merrill, do you have any preference  
26 between June 19 and July 13?

27 THE ACCUSED: Please call me Steve.

28 THE COURT: Mr. Merrill, which of those two dates do  
29 you prefer?

30 THE ACCUSED: Please call me Steve.

31 THE COURT: If you're not going to tell me which one  
32 you prefer, then I'm going to assign one.

33 THE ACCUSED: Go ahead.

34 THE COURT: I would really like you to tell me if  
35 there's one of those dates that you prefer more  
36 than the other?

37 THE ACCUSED: The -- the filings have been done. If  
38 the Crown would like me to re-file the four  
39 filings because there's a problem with them, I'm  
40 absolutely happy to. Your Honour, I have lawful  
41 cause. It's very clear --

42 THE COURT: Sir --

43 THE ACCUSED: -- to delay these filings. Call me  
44 Steve.

45 THE COURT: Stop talking. I'm not doing the trial  
46 right now, I don't even know if I'm going to be  
47 the trial judge on the return date. Okay, I don't

## Proceedings

1 know that. I might well be.  
2 THE ACCUSED: I hope you are.  
3 THE COURT: But --  
4 THE ACCUSED: You've entered the plea.  
5 THE COURT: I have.  
6 THE ACCUSED: Yeah.  
7 THE COURT: Out of all of those dates, if I were to  
8 seize myself of being the judge hearing it, it  
9 would need -- there's only one of them that I'm  
10 available because that -- I'm a Provincial Court  
11 judge so I'm sitting in other places a lot of the  
12 time, and when I am next back here, sitting in  
13 Kelowna on any of these dates, there's only one of  
14 them and it's the 13th of July. I don't think  
15 there's a need for me to seize myself in the sense  
16 that all I've done is the arraignment here, but we  
17 have taken a long time with that arraignment  
18 process. If I -- if we fix this trial date for  
19 the 13th of July, there would be a real  
20 possibility that I would be the judge hearing it  
21 then, but I'm not going to seize myself of that.  
22 But if I --  
23 THE ACCUSED: Well, I'd -- I'd prefer -- I'd prefer  
24 you're the judge because you've accepted on the  
25 record your oath of allegiance to Her Majesty.  
26 THE COURT: If you want me to seize myself, I -- it's  
27 within my power to do that, and I think that that  
28 date is probably just about as good as any of the  
29 others. I'm going to just ask one more time what  
30 the Crown -- I know you were tentatively saying  
31 there's only one of these dates that might be a  
32 problem, but do you have any witness problems or  
33 any reason why it couldn't go on the 13th of July?  
34 MR. LEPINE: No, Your Honour, that's fine from the  
35 Crown's perspective.  
36 THE COURT: Okay. So I will say those magic words that  
37 I seize myself.  
38 THE ACCUSED: What does that mean?  
39 THE COURT: It means that I'll be your judge on this  
40 matter on the trial date, and the trial date, I'm  
41 adjourning to the 13th of July.  
42 THE ACCUSED: That's -- that's excellent, Judge Smith,  
43 because --  
44 THE COURT: At 9:30 in Courtroom 7.  
45 THE ACCUSED: -- because you've accepted your oath of  
46 allegiance to Her Majesty, and I trust, at that  
47 date, you will be in honour, you will look at the



## Proceedings

1 evidence fairly. I'll be here.  
2 THE COURT: Mr. Merrill, I just want --  
3 THE ACCUSED: I'll be here with a big, big group.  
4 THE COURT: Mr. Merrill, I want to ask you just one --  
5 THE ACCUSED: Steve. Call me Steve.  
6 THE COURT: -- question.  
7 THE ACCUSED: Call me Steve, please.  
8 THE COURT: My question is this, when is your next  
9 court date? I just want to hear you confirm the  
10 date so that we're -- you're clear on what date it  
11 is.  
12 THE ACCUSED: On behalf of the accused person, aka the  
13 taxpayer, I understand the next court date for  
14 Merrill is July 13th.  
15 THE COURT: At 9:30.  
16 THE ACCUSED: In my capacity as a man, I'm saying, you  
17 as a man, we'll all be here. I hope you're here.  
18 THE COURT: At nine --  
19 THE ACCUSED: Because I'm looking for a judge who is  
20 acting in honour and will bring his oath of  
21 allegiance to Her Majesty into the trial.  
22 THE COURT: At 9:30 in Courtroom 7, is your next court  
23 date, July 13th. Thank you.  
24 MR. LEPINE: Thank you, Your Honour. So it's not  
25 nine o'clock, it's 9:30.  
26 THE COURT: Oh, yeah, it's what I said. I --  
27 MR. LEPINE: Okay, that's fine. I'll be here at  
28 9:00 -- someone will be here at 9:00 and --  
29 THE COURT: Yeah, I think that I should have said nine  
30 o'clock instead of 9:30.  
31 MR. LEPINE: No, I think that's fine.  
32 THE COURT: He -- you're still here. The actual  
33 court --  
34 THE ACCUSED: Well, I'm actually on -- I'm on land, you  
35 guys are on the ship, correct. So I'm -- I can  
36 hear, but I'm not on the ship.  
37 THE COURT: Okay. If you can hear, I'm directing that  
38 it be at nine o'clock instead of 9:30.  
39 THE ACCUSED: Okay.  
40 THE COURT: On that date.  
41 THE ACCUSED: Will this trial be a by indictment  
42 process so that I can have a --  
43 THE COURT: No, it won't.  
44 THE ACCUSED: -- pre-trial hearing?  
45 THE COURT: No, it won't be.  
46 THE ACCUSED: It will be summary?  
47 THE COURT: Yes, it's summary.

**Proceedings**

1 THE ACCUSED: Summary.  
2 THE COURT: That's exactly what it is.  
3 THE ACCUSED: All right.  
4 THE COURT: Okay? But the only thing that's different  
5 than what we said a minute ago is I'm saying  
6 9:00 a.m. instead of 9:30, okay?  
7 THE ACCUSED: Ah.  
8 THE COURT: But everything else is the same, okay?  
9 THE ACCUSED: Excellent.  
10 THE COURT: Thank you.

11  
12 (PROCEEDINGS ADJOURNED TO JULY 13, 2020, AT  
13 9:00 A.M.)  
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17 Transcriber: I. Lim  
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I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.



I. Lim  
Court Transcriber