Case Name:

R. v. Ellis

Between
Her Majesty the Queen, Respondent, and
Jacqueline Ellis, Applicant (Appellant)

[2009] O.J. No. 2460

2009 ONCA 483

67 C.R. (6th) 313
244 C.C.C. (3d) 438
95 O.R. (3d) 481
250 O.A.C. 295
2009 CarswellOnt 3373

Docket: C46654

Ontario Court of Appeal
Toronto, Ontario

J.I. Laskin, E.E. Gillese JJ.A. and W.L. Whalen J. (ad hoc)

Heard: April 10, 2008; written submissions, February 12 and 13, 2009.
Judgment: June 15, 2009.

(49 paras.)

Criminal law — Procedure — Information or indictment — Requirements for laying information — Appeal from refusal to receive an information allowed — A justice of the peace refused to receive an information from the appellant on the basis that the offences alleged therein took place in a different administrative region — The appellate court set aside the decision — The term "territorial jurisdiction" in s. 504 of the Criminal Code referred to the entire province of Ontario — Justices were conferred jurisdiction throughout Ontario by s. 17(1) of the Justices of the Peace Act — The division of Ontario into regions for administrative purposes did not alter the jurisdiction conferred on justices — Criminal Code, s. 504 — Justices of the Peace Act, s. 17(1).

Criminal law — Jurisdiction — Place of offence — Appeal from refusal to receive an information allowed — A justice of the peace refused to receive an information from the appellant on the basis that the offences alleged therein took place in a different administrative region — The appellate court set aside the decision — The term "territorial jurisdiction" in s. 504 of the Criminal Code referred to the entire province of Ontario — Justices were conferred jurisdiction throughout Ontario by s. 17(1) of the Justices of the Peace Act — The division of Ontario into regions for administrative purposes did not alter the jurisdiction conferred on justices — Criminal Code, s. 504 — Justices of the Peace Act, s. 17(1).

Appeal by Ellis from refusal to receive an information. The appellant, a private citizen, appeared at the justice of the peace office in Toronto to lay a charge and swear an information in relation to events that took place in Hanover, Ontario. Neither the appellant nor the accused were residents of Toronto. The justice was assigned to the administrative region of Toronto. The alleged offences were said to have occurred in the Central West region of Ontario. The justice refused to receive

the information on the basis that the matter had no connection to the Toronto region. She advised the appellant to attend before a justice in the region in which Hanover was located. The appellant appeared before the Superior Court seeking an order compelling the Justice to receive her information. The judge refused on the basis that the matter had no connection to the Toronto region. The Crown opposed the appeal on the grounds that under s. 504 of the Criminal Code, the requirement to receive an information within the territorial jurisdiction of the justice referred to the administrative regions of Ontario rather than the entire province of Ontario. At issue was the interpretation of "territorial jurisdiction".

HELD: Appeal allowed. The term "territorial jurisdiction" in s. 504 of the Criminal Code referred to the entire province of Ontario. Pursuant to s. 17(1) of the Justices of the Peace Act, justices had jurisdiction throughout Ontario. The division of Ontario into regions for administrative purposes did not alter the jurisdiction conferred on justices. Such an interpretation did not offend the principles of statutory interpretation, as the phrase "territorial jurisdiction" was sufficiently flexible to accommodate any provincial or territorial differences. No concerns regarding forum shopping arose, as the fact that an information was received in a particular region did not mean that any resulting criminal trial was obliged to occur in that region. Section 504 of the Code was administrative in nature. As long as the preconditions were met, the justice was obliged to receive the information. The decision below was accordingly set aside.

Statutes, Regulations and Rules Cited:

Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 1(1), s. 79.1

Criminal Code, R.S.C. 1985, c. C-46, s. 2, s. 470, s. 504, s. 507, s. 507.1, s. 507.1(2), s. 509(2), s. 798

Justices of the Peace Act, R.S.O. 1990, c. J.4, s. 17(1)

Appeal From:

On appeal from the order of Justice E.G. Ewaschuk of the Superior Court of Justice dated January 22, 2007 and reported at [2007] O.J. No. 5464.

Counsel:

Joseph Markin, for the appellant.

Kim Crosbie, for the respondent.

The judgment of the Court was delivered by

1 E.E. GILLESE J.A.:— In Ontario, must a justice of the peace receive an information if neither the alleged offence nor the alleged offender has a connection to the territorial jurisdiction to which the justice has been appointed? That question lies at the heart of this appeal. Its answer depends on the meaning of "territorial jurisdiction" in s. 504 of the *Criminal Code*, R.S.C. 1985, c. C-46.

OVERVIEW

2 Jacqueline Ellis ("Ms. Ellis" or "the appellant"), a private citizen, appeared at the Justice of the Peace Office at Old City Hall in Toronto on May 17, 2006. She wanted to lay a charge and swear an information in relation to events said to have taken place in or around Hanover, Ontario.

Neither Ms. Ellis nor the "accused" are residents of Toronto.

3 For administrative purposes, the province of Ontario is divided into eight regions. Metropolitan Toronto is in the Toronto region. The alleged offences are said to have occurred in the Central West region.

4 Justice of the Peace Lau is assigned to the administrative region of Toronto. She refused to receive the information on the basis that the matter had no connection to the Toronto region. She advised Ms. Ellis to attend before a justice of the peace in the region in which Hanover is located.

5 Ms. Ellis then appeared before Ewaschuk J. of the Superior Court of Justice seeking an order compelling Justice of the Peace Lau to receive her information. She subpoenaed a police officer from Hanover to attend the proceedings. Ewaschuk J. refused to issue the order on the basis that the matter had no connection to the Toronto region.

6 Ms. Ellis now appeals to this court. She continues to seek an order which would enable her to lay the information in Toronto.

7 The Crown opposes the appeal. It acknowledges that a justice of the peace must receive an information provided that it is valid on its face and within the "territorial jurisdiction" of the justice. However, it contends that "territorial jurisdiction" is a reference to the administrative regions in Ontario and not the entire province of Ontario. Consequently, it argues, as neither the appellant nor the person named in the information are residents of the City of Toronto and the alleged incidents of criminal conduct occurred in and around Hanover, Ontario, there is no connection to Toronto and the justice correctly declined to receive the information.

8 For the reasons that follow, I would allow the appeal.

THE ISSUE

9 The jurisdiction of a justice of the peace to receive an information flows from s. 504 of the *Criminal Code*. Section 504 makes it mandatory that a justice of the peace receive an information, provided that there is a connection between the person whom it is alleged has committed an indictable offence and the "territorial jurisdiction" of the justice.

10 As "territorial jurisdiction" is not defined in the *Criminal Code*, this appeal depends on the meaning to be given to those words. Specifically, it must be decided whether "territorial jurisdiction" refers to the administrative regions created by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, or whether it refers to the province of Ontario. If "territorial jurisdiction" is interpreted as referring to administrative regions, Justice of the Peace Lau was entitled to refuse to receive the information. If, however, it refers to the province of Ontario, the justice was obliged to receive the information.

THE RELEVANT LEGISLATION

11 Section 504 of the *Criminal Code* reads as follows:

> Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and *the justice shall receive the information*, where it is alleged
>
> (a) that the person has committed, anywhere, an indictable offence that may be tried in the *province* in which the justice resides, and that the person
>
> (i) is or is believed to be, or
>
> (ii) resides or is believed to reside,

within the *territorial jurisdiction* of the justice;

(b) that the person, wherever he may be, has committed an indictable offence within the *territorial jurisdiction* of the justice;

(c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the *territorial jurisdiction* of the justice; or

(d) that the person has in his possession stolen property within the *territorial jurisdiction* of the justice. [Emphasis added.]

12 Section 2 of the *Criminal Code* defines "territorial division" to include "any province, county, union of counties, township, city, town, parish or other judicial division or place to which the context applies". As discussed below, the breadth of this definition is worthy of note.

13 Section 17(1) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4 provides that "[j]ustices of the peace have jurisdiction throughout Ontario."

14 Section 1(1) of the *Courts of Justice Act* defines "region" to mean "a region prescribed under section 79.1." Section 79.1 provides:

(1) For administrative purposes related to the administration of justice in the province, Ontario is divided into the regions prescribed under subsection (2).

(2) The Lieutenant Governor in Council may make regulations prescribing regions for the purposes of this Act.

15 The Province of Ontario is divided into eight different regions as described in the schedule to R.R.O. 1990, Reg. 186.

THE PARTIES' POSITIONS

The Appellant

16 The appellant relies on *R. v. Feige*, [1992] O.J. No. 2521 (Ct. J. (Gen. Div.)), *R. v. Hackett*, [2002] O.J. No. 3887 (S.C.) and *R. v. Ponnuthurai* (2002), 170 C.C.C. (3d) 440 (Ont. Ct. J.), all of which held that "territorial jurisdiction" or equivalent wording[1] in the *Criminal Code* refers to the province of Ontario.

17 In *Feige*, the court considered the meaning of "territorial jurisdiction" in s. 470 of the *Criminal Code* for the purpose of determining whether a provincial court judge had jurisdiction to hear a particular matter. Ferguson J. concluded that "territorial jurisdiction" refers to the province of Ontario because provincial judges have jurisdiction throughout the province. He rejected the notion that "territorial jurisdiction" refers to the region to which a provincial court judge has been assigned for administrative purposes.

18 In *Hackett*, Aitken J. concluded that "territorial jurisdiction" meant the province of Ontario for the purposes of s. 504 of the *Criminal Code*. The alleged offences in *Hackett* occurred in the East Region but the information was sworn before a justice of the peace in the Toronto region. The information contained one charge alleged to have occurred in the Toronto Region; however, that charge was withdrawn. The applicant was ordered to proceed to a preliminary inquiry. On arraignment, the defence moved to quash the information and stay the proceedings on the basis that the justice had been without jurisdiction to receive the information. The motion to quash was dismissed on the ground that "territorial jurisdiction" in s. 504 meant the province of Ontario. The defence brought an application in the nature of *certiorari* to quash the order.

19 Aitken J. dismissed the application. She observed that the *Courts of Justice Act* created regions for administrative, not jurisdictional, purposes. Section 504, on the other hand, "refers to the concept of jurisdiction, not the concept of courts administration": *Hackett* at para. 15. Consequently, Aitken J. held that the justice was entitled to receive the information even though the offences were alleged to have occurred outside the region and the alleged offender neither resided nor was found in the region.

20 In *Ponnuthurai*, the accused was charged with a sexual assault alleged to have occurred in the Peel region. He lived in Toronto. The charge was laid in Toronto before a justice of the peace on the information of a member of the Toronto police force. The Crown proceeded summarily before a provincial court judge sitting in Toronto.

21 Section 798 of the *Criminal Code* states that a summary conviction court has jurisdiction over proceedings "in the territorial division over which the person who constitutes that court has jurisdiction." The accused argued that the provincial court judge sitting in Toronto did not have jurisdiction to hear the matter because it arose in Peel.

22 Pringle J. rejected that argument. She relied heavily on the reasoning in *Hackett*. In addition, she reviewed the legislative history of the *Courts of Justice Act* and concluded that the effect of the amendments was to confirm that Ontario is to be viewed as a single jurisdictional unit - amendments dividing Ontario into judicial regions and changing the name of the court were administrative only and did not affect the territorial jurisdiction of Ontario Court of Justice. Thus, she concluded, the correct interpretation of "territorial division" in s. 798 of the *Criminal Code*, when considered in conjunction with the *Courts of Justice Act*, is the entire province of Ontario.

23 In additional written submissions filed later with the court, the appellant relied also on *Re Gentles*, [1994] O.J. No. 1409 (Ct. J. (Gen. Div.)).

24 In *Gentles*, a private investigator was retained to investigate the death of Mr. Gentles. He swore an information before a justice of the peace in Toronto alleging that Mr. Gentles was killed by named prison guards while incarcerated at the Kingston Penitentiary. Immediately after the information had been sworn, counsel for the applicant sought to embark on the s. 507 pre-inquiry[2]. The justice of the peace consulted with the Senior Regional Justice of the Peace, who in turn consulted with the Coordinator of Justices of the Peace for Ontario. It was determined that the pre-inquiry should be held in Kingston, where the offences were alleged to have occurred. After receiving submissions on the jurisdictional issue, the Senior Regional Justice concluded that s. 507 of the *Criminal Code* allowed for any justice, not just the receiving justice, to conduct the pre-inquiry under s. 507. Further, in his role as coordinator, the Coordinator of Justices of the Peace was entitled to direct that the pre-inquiry should be held by a justice in the Eastern Region. The informant sought *mandamus* and *certiorari* in aid.

25 Moldaver J. dismissed the application. He held that it was "perfectly proper for the s. 507 hearing to be conducted by a justice other than the s. 504 receiving justice, with or without the consent of the informant": *Gentles* at para. 30. First, as a matter of authority, it had long been established that the justice conducting the s. 507 hearing need not be the same as the s. 504 justice. While ss. 504 and 507 were related, and while the same justice would usually carry out both functions in practice, the *Criminal Code* did not proscribe the carrying out of the two distinct functions by different justices.

26 Second, accepting the applicant's submission - that unless the informant consented to having different justices perform the ss. 504 and 507 hearings, they would have to be performed by one justice - would wreak havoc on the administration of justice. It would mean that any informant would be able to "pick and choose the location of the s. 507 hearing, irrespective of any and all concerns regarding the proper and efficient administration of justice": *Gentles* at para. 22. Moldaver J. cited the "scarcity of judicial resources and tremendous backlogs which exist in some jurisdictions", as well as the "time honoured principle that generally, criminal matters should be

dealt with in the locale where the alleged offence is said to have committed": *Gentles* at paras. 15, 22. At para. 24, he noted that, "the legislature has seen fit, for the most part, to place in the hands of the judiciary the tools necessary to ensure the most efficient and effective use of judicial personnel and resources." It was not for informants or accused persons "to drive the administration of justice as they see fit". Rather, it was "the responsibility of the judiciary... to determine the allocation of judicial work and the assignment of individual judicial officers to individual cases": *Gentles* at paras. 24-25.

27 Third, accepting the applicant's submission would lead to forum shopping. At para. 19, Moldaver J. stated that "any proposition which would countenance the right of a party to select the presiding judicial officer must not only be discouraged; it must be soundly and unequivocally rejected." Moldaver J. drew a distinction between hearings under ss. 504 and 507. At paras. 17-18, he stated:

> [I]t must be remembered that whereas the functions of a justice under s. 504 are largely administrative, the s. 507 determination is judicial in nature. *Pursuant to s. 504 of the Code, an informant is entitled to lay an information before any justice in the province and such information must be received if the preconditions of that provision have been met.* All counsel agreed with this principle. (R. v. Whitmore (1988), 41 C.C.C. (3d) 555 (Ont. H.C.); affirmed at (1990), 51 C.C.C. (3d) 294 (Ont. C.A.); R. v. Jean Talon Fashion Centre Inc. (1975), 22 C.C.C. (2d) 223 (Q.B.).
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> Thereafter, the functions of the justice cease to be administrative. The important next step involves a pre-inquiry under s. 507 of the Code to determine whether or not process should issue. That involves a judicial determination on the part of a justice. In other words, the decision to issue or refuse process must be exercised judicially. (R. v. Whitmore, supra; Buchbinder and The Queen (1985), 20 C.C.C. (3d) 481 (Ont. C.A.); R. v. Allen (1974), 20 C.C.C. (2d) 447 (Ont. C.A.). [Emphasis added.]

28 The appellant places particular reliance on the emphasized passage.

The Crown

29 The Crown advances three arguments in support of its position that "territorial jurisdiction" in s. 504 refers to administrative regions in Ontario and not the province as a whole: (1) basic principles of statutory interpretation; (2) the common law principle that criminal trials should be held in the locality in which the alleged offence took place; and, (3) policy considerations relating to the efficient use of public resources.

30 The statutory interpretation argument is based on the fact that "territorial jurisdiction" and "province" both appear in s. 504. Accordingly, it is argued, they must mean different things because if Parliament had intended the same meaning for both, it would have used only one of the terms.

31 This reasoning underpins the decision in *R. v. Wells*, [1995] O.J. No. 4245 (Ct. J. (Prov. Div.)). In *Wells*, the accused was alleged to have committed an assault in the regional municipality of York. The preliminary inquiry was held in the Toronto region. Among other things, Wells argued that the Toronto judge did not have jurisdiction to conduct a preliminary inquiry for an offence alleged to have taken place in York.

32 Knazan J. rejected this argument, saying that to equate "territorial jurisdiction" with "province" in s. 504 would render the references to "territorial jurisdiction" redundant. At para. 24 he stated:

> *If territorial jurisdiction in s. 504 means the Province of Ontario because justices of*

> *the peace have province-wide jurisdiction, then a justice, in a case that may be tried in Ontario, can take an information if the person is within or believed to be within or residing or believed to be residing anywhere in Ontario*. Assuming that proper process issued, a preliminary inquiry could then be held in any part of Ontario and the committal would give the trial court jurisdiction under s. 470. *The references to territorial jurisdiction in s. 504 and 470 of the code would be very limited if not redundant*. The prosecution which has to apply for a change of venue would never need to but could determine venue by where it had the information sworn. *Substantial procedural changes in the criminal law will have been affected by the Legislature expanding the jurisdiction of a justice of the peace*. [Emphasis added.]

33 The second reason given by the Crown in support of its position is that criminal trials should be held in the locality in which the alleged crime took place. Garrow J.A. gave the classic formulation of this principle in *The King v. O'Gorman* (1909), 15 C.C.C. 173 (Ont. C.A.), at p.178:

> By the common law the rule was well established that *the trial of all criminal offences must take place in the county or district in which the crime was committed*. ... The theory still is that local offences shall be tried locally, and not alone out of consideration for the prisoner, but *in order that each locality may in this way be made to bear its proper share of enforcing the criminal law against the local offender*. [Emphasis added, citations omitted.]

34 More recently, Dubin J.A. affirmed this principle in *R. v. Simons* (1976), 30 C.C.C. (2d) 162 (Ont. C.A.), at pp. 166-67. In *Simons*, the accused was arrested in the County of Peterborough. He resided in that county and the arrest was for an offence allegedly committed there. However, he was released on a promise to appear which required him to appear for trial in the provincial court of Port Hope, in the County of Northumberland. He appeared and unsuccessfully sought an order transferring the proceedings back to the County of Peterborough.

35 His appeal to this court was allowed and an order went prohibiting the continuation of the proceedings in the County of Northumberland. At the time, the Ontario provincial county and district courts had yet to be amalgamated into province-wide courts. However, provincial court judges had jurisdiction to sit throughout the province. Dubin J.A. rejected the argument that because each judge had jurisdiction to sit throughout the province, references to "territorial jurisdiction" in the *Criminal Code* were no longer relevant. He saw s. 14 of the *Provincial Courts Act*, R.S.O. 1970, c. 369 as significant because it preserved the territorial jurisdiction of the county and district courts.

36 The policy reason on which the Crown relies is the efficient use of public resources. It contends that to permit an information to be laid in any region of the province, without restriction, would result in an inefficient use of public resources because on reception, a judge or designated justice in the region where the information is laid must hear and consider the allegations of the informant.

37 If "a case for doing so is made out", pursuant to s. 507.1(2), a warrant or, more likely, a summons, shall then be issued to compel the accused to attend before the justice and answer the charge. Pursuant to s. 509(2), a summons must be personally served on the accused. The Crown contends that if s. 504 is interpreted to mean the entire province of Ontario, police in the jurisdiction where the information is laid will either have to travel to the region where the accused is resident or coordinate with local police to have the summons served on the accused through the local sheriff's office. Further, if proceedings are eventually commenced, the accused, the complainant, the witnesses and any investigating officers would have to travel to the region where the information was laid. The Crown argues that this would be inefficient since the Attorney General or the accused would, in all likelihood, apply for a change of venue to return the matter back to the region where the information ought to have been laid in the first place.

ANALYSIS

38 In my view, "territorial jurisdiction" in s. 504 of the *Criminal Code* refers to the entire province of Ontario.

39 Pursuant to s. 17(1) of the *Justices of the Peace Act*, justices have jurisdiction throughout Ontario. The fact that the *Courts of Justice Act* divides Ontario into regions for administrative purposes does not alter the jurisdiction conferred on justices by s. 504 of the *Criminal Code*. As Aitken J. stated in *Hackett* at para. 15, "[t]he regions created under the Courts of Justice Act are created for administrative purposes related to the administration of justice in the province; they are not created for jurisdictional purposes."

40 Contrary to the Crown's submission, interpreting "territorial jurisdiction" in s. 504 as the entire province of Ontario does not offend the principles of statutory interpretation. The *Criminal Code* is federal legislation, governing all of the provinces and territories. Adopting one interpretation for one province does not dictate such a result elsewhere in the country. In other parts of Canada, where legislative schemes governing the systems of court may be different, "territorial jurisdiction" may well have a different meaning. In my view, the phrase "territorial jurisdiction" in s. 504, like the definition of "territorial division" in s. 2 of the *Criminal Code*, provides the flexibility necessary to accommodate provincial and territorial differences: see *Hackett* at para. 10. Accordingly, interpreting "territorial jurisdiction" in s. 504 to mean the province of Ontario does not necessarily render that phrase redundant simply because the word "province" is used elsewhere in that section.

41 Moreover, the reference in s. 504 to "territorial jurisdiction" in Ontario may be explained on an historical basis. Historically, in Ontario, justices were appointed to a particular county or docket. At that time, their jurisdiction may have been limited to the territory to which they had been appointed. However, the enactment of the *Courts of Justice Act, 1984*, S.O. 1984, c. 11 "brought about significant changes in court structure" and "altered the approach to territorial divisions within the province": see *Ponnuthurai* at p. 443. Separate provincial courts of each county and district were amalgamated into province-wide courts. After a detailed review of the legislative history of the Act and the subsequent amendments, Pringle J. stated at p. 445 of *Ponnuthurai*: :

> When the language of the *Courts of Justice Act* was amended to indicate that the division of the province into regions was for administrative as opposed to jurisdictional purposes, it is logical to infer that regions no longer had jurisdictional significance, but rather only administrative [significance]. *The effect of the legislation was thus to create different administrative regions within a single jurisdictional unit.* [Emphasis added.]

42 The notion of a single jurisdictional unit is further reflected in s. 17(1) of the *Justices of the Peace Act* which, as has been mentioned, states that justices of the peace have jurisdiction throughout the province.

43 I agree with the Crown that there are good administrative reasons to have cases that arise in a particular region tried in that region. However, I do not accept that interpreting "territorial jurisdiction" as the province of Ontario for the purposes of s. 504 of the *Criminal Code* offends this principle. The fact that an information is received in a particular region does not mean that any resulting criminal trial must take place in that region. Indeed, as *Gentles* makes clear, it does not necessarily mean that a pre-inquiry must proceed in that region.

44 In *Gentles*, Moldaver J. explained that while an informant is entitled to lay an information under s. 504 before any justice in the province, in the ordinary case, a hearing under s. 507 (and, presumably s. 507.1) should be conducted where the offence was alleged to have been

committed. At several points in his reasons, he reiterated the "time honoured principle that generally, criminal matters should be dealt with in the locale where the alleged offence is said to have been committed": *Gentles* at paras. 22. However, Moldaver J. recognized that there may be "rare cases where requiring the s. 507 hearing to proceed in a certain region would effectively deny the informant his or her right to pursue a legitimate complaint": *Gentles* at para. 28. In these cases, "clearly, there should be some mechanism in place whereby an informant can make his or her views known and considered before the matter is directed to another locale": *Gentles* at para. 32. At paras. 28-29, Moldaver J. offered the following illustrative examples:

> Take for example the case of an informant who is bed-ridden and physically unable to travel to an outlying region; or the case of a prisoner now residing at Beaver Creek, who wishes to lay charges against inmates or prison guards at Millhaven but who, for reasons of safety, fears returning to a prison in Kingston; or the case of a single parent who is unable to arrange for child care which would be necessitated by his or her absence from home for any significant period of time.
>
> *These are but a few examples of the kinds of situations which could arise and for which, flexibility must exist.* [Emphasis added.]

Moldaver J. attributed this flexibility to the broad grant of jurisdiction in s. 17(1) of the *Justices of the Peace Act*.

45 It follows from the above that I do not find the Crown's argument that a broad interpretation of "territorial jurisdiction" in s. 504 would lead to an inefficient use of public resources to be particularly persuasive. Interpreting "territorial jurisdiction" in s. 504 so as to allow an informant to swear an information before any justice in the province does not necessarily entail any inconvenience or expense for either the parties or the witnesses to a criminal proceeding. As in *Gentles* itself, a pre-inquiry may be directed to proceed in a region other than the informant's choosing out of a concern for the orderly administration of justice or the principle that criminal matters should be dealt with where they occurred.

46 Moreover, a broad interpretation of "territorial jurisdiction" in s. 504 ensures both flexibility and efficiency in those rare situations described by Moldaver J. where there is a legitimate reason for the pre-inquiry to be held in a location other than where the alleged offence was committed. In such circumstances, both the s. 504 hearing and the pre-inquiry may proceed before a single justice in a different region, consistent with common practice.

47 Further, the Crown's concerns regarding the efficient use of public resources should not be overstated. To some extent, the Crown's argument for restricting the definition of "territorial jurisdiction" rests on statements made in *O'Gorman* and *Simons*. With respect, those cases are neither binding nor particularly relevant at this point in history. They were decided well before the amalgamation of the provincial courts in 1984. Moreover, as a result of advances in communication and travel, the concerns which underlay those decisions are not as pressing as they once were. As Aitken J. explained in *Hackett* at para. 15:

> The realities of the times when the principles in the O'Gorman and Simons cases were enunciated were very different from our current realities. With communications being virtually instantaneous throughout the province, with travel being commonplace, and with the time required for travel from one locale to another in the province having been drastically reduced over the last century, some of the policy concerns for having a restricted definition of "territorial jurisdiction" under s. 504 of the Criminal Code are not as pressing.

48 Finally, to the extent that the Crown's opposition to a broad interpretation of "territorial jurisdiction" in s. 504 is based on a concern about forum shopping, I would simply add this.

Section 504 is administrative in nature - as long as the preconditions are met, the justice must receive the information. Any concerns about forum shopping can surely be addressed at a later stage in the process: see *Gentles* at paras. 21, 33.

DISPOSITION

49 Accordingly, I would allow the appeal, set aside the decision below and issue an order requiring the justice to receive the information.

E.E. GILLESE J.A.
J.I. LASKIN J.A.:— I agree.
W.L. WHALEN J. (*ad hoc*):— I agree.

1 In *Ponnuthurai*, the words were "territorial division". As noted, that term is defined in s. 2 of the *Criminal Code.*

2 Section 507 sets out the procedure to be followed for issuing process where an information is laid in a public prosecution. Section 507.1 sets out the procedure to be followed for private prosecutions. In a public prosecution under s. 507, the justice receiving the information shall hear and consider, *ex parte*, the allegations of the informant and, if the justice considers it desirable or necessary, the evidence of witnesses. In a private prosecution under s. 507.1, the receiving justice shall refer the information to a provincial court judge or a designated justice, to consider whether to compel the appearance of the accused. The judge or designated justice must consider the allegations of the informant and the witnesses, as well as give the Attorney General a copy of the information, notice and an opportunity to attend the hearing and present evidence.Under both processes, if "a case for doing so is made out", the justice or the judge, as the case may be, shall issue either a summons or a warrant for the arrest of the accused to compel him or her to attend before a justice to answer the charge.