

IN THE PROVINCIAL OFFENCES COURT

HER MAJESTY THE QUEEN

against

ARTHUR KOVARI

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P R O C E E D I N G S   A T   T R I A L

BEFORE HIS WORSHIP JUSTICE OF THE PEACE  
L. FRAITES, on November 8, 1985, at  
Scarborough.

OFFENCE: Construct - No Permit  
Fail to Comply  
Fail to Comply  
Building Code Act

\* \* \*

APPEARANCES:

MR. J. CASEY

Agent for the Crown

The defendant was not represented  
by counsel in this matter

IN THE PROVINCIAL OFFENCES COURT

HER MAJESTY THE QUEEN

against

ARTHUR KOVARI

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Scarborough, Ontario  
November 8, 1985  
402 court

MR. CASEY: Your Worship, if we may, I, on behalf of the Borough of East York, have only two cases before proceeding. One of them is the one involving the interpreter. I'd like to call that one first - Arthur Kovari.

THE COURT: Is he here?

CLERK OF THE COURT: Come forward, please...Mr. Kovari, in the v-shaped area right here.

THE COURT: Are you ready to proceed with your trial today, sir?

THE DEFENDANT: (via Hungarian interpreter)  
Yes, sir.

MR. CASEY: Your Worship, I notice there are a number of charges appearing on your list. I only have three, and I've marked them in the order in which I would ask that they proceed.

The first one would be contrary to section 6 (5) of the Building Code Act, and that is: cause to be constructed a building other than in accordance with plans on the basis of which a permit was issued. That would be the first one.

And the second would be somewhat the same. It's worded: failing to comply with an order dated June 8, 1984, made by an inspector, pursuant to section 8(2).

THE COURT: Correct.

MR. CASEY: And the third one is: failing to comply with a stop work order dated June 12, 1984, made by a chief building official.

THE COURT: All right.

MR. CASEY: Those are the only three that we...

THE COURT: Well, there is another one that is worded exactly that you indicated on the one that you called, and the information is not signed so it's just a piece of paper.

MR. CASEY: Yes.

THE COURT: I do have two other informations here. Do you wish to withdraw them, then?

MR. CASEY: I have no knowledge of what they are.  
We only have record of three that I've given out, so I think that  
would cover us. They could be withdrawn.

THE COURT: All right. Okay.

These are the three, in that order.

CLERK OF THE COURT: Arthur Kovari, you are charged  
on or about the 12th day of November, 1984, at  
60 Don Valley Drive, in the Borough of East York,  
in the Judicial District of York, did commit the  
offence of cause to be constructed a building  
other than in accordance with plans on the basis  
of which a permit was issued, contrary to section  
6 (5) of the Building Code Act, R.S.O. 1980,  
Chapter 51.

How do you plead to this charge, sir, guilty or  
not guilty?

THE DEFENDANT: Not guilty.

CLERK OF THE COURT: Arthur Kovari, you are  
further charged on or about the 12th day of  
November, 1984, at 60 Don Valley Drive, in the  
Borough of East York, in the Judicial District of  
York, did commit the offence of failing to comply  
with an order dated June 8, 1984, made by an  
inspector pursuant to section 8 (2) of the  
Building Code Act, R.S.O. 1980, Chapter 51,  
contrary to section 24 (1) (b) of the Building  
Code Act.

How do you plead to this charge, sir, guilty or  
not guilty?

THE DEFENDANT: Not guilty.

CLERK OF THE COURT: Arthur Kovari, you are charged  
on or about the 12th day of November, 1984, at

CLERK OF THE COURT: (cont'd.) 60 Don Valley Drive, in the Borough of East York, in the Judicial District of York, did commit the offence of failing to comply with a stop work order dated June 12, 1984, made by a chief building official pursuant to section 8 (5) of the Building Code Act, R.S.O. 1980, Chapter 51, contrary to section 24 (1) (b) of the Building Code Act, R.S.O. 1980, Chapter 51.

How do you plead to this charge, sir, guilty or not guilty?

THE DEFENDANT: Not guilty.

CLERK OF THE COURT: Have a seat right there, please.

THE COURT: Do you wish to have all three matters heard together?

MR. CASEY: Yes, Your Worship.

THE COURT: Mr. Kovari, the three charges have the same offence date and the prosecutor wishes to have the three matters heard together and I think in all the circumstances that they should be heard together.

THE DEFENDANT: Yes.

THE COURT: Thank you.

All right, just have a seat, please.

MR. CASEY: If I may, Your Worship, I have an unmarked copy of the Act in question, for the court. I find it helpful if I might briefly reference you to the sections under you will be dealing, as I find the amount of evidence required from the Crown in these prosecutions is usually quite short if we can stay within the confines of the section.

If I might take you, on the first charge...the Act itself is only 17 pages...you start at the front, section 6 (5). You see at the bottom of page five:

"No person shall construct or cause to be

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5 MR. CASEY: (cont'd.) "constructed a building in a municipality except in accordance with plans, specifications, documents and any other information on the basis of which a permit was issued or any changes thereto authorized by the chief official".

10 In that regard we'll be putting in the plans which were submitted, and the inspector will give the evidence as to where the difference lies.

Going to the second one, fail to comply with an order dated June 8th, made by an inspector pursuant to section 8...

THE COURT: Just a minute, please.

15 Mr. Burgess has a matter that he has to deal with, and he has to be away in about a couple of minutes, so we'll just take a short break. We'll come back in a few minutes.

COURT RECESSED

U P O N R E S U M I N G

20 (REPORTER'S NOTE: At this time an unrelated matter was dealt with)

U P O N R E S U M I N G

25 THE COURT: We'll proceed with the Kovari matter, then.

MR. CASEY: Yes. I left you in respect of the second charge, that is: failure to comply with an order...

THE COURT: Well, the third charge is similar to...

30 MR. CASEY: Yes, just different subsections of number 8.

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THE COURT: That's right.

5 MR. CASEY: And as Your Worship has stressed, they're both essentially the same under number 8 (2), where an inspector finds any provision of the Act or the Building Act is being contravened he may give to the person who he believes to be the contravenant an order in writing directing compliance.

10 You will find provision of the Act...well, the provision of the Act really is, it will be alleged, was really the first charge, i.e. failing to build in accordance with the Code. That's an Act provision.

15 That takes care of that one, and then subsection (5), if an order is not complied with in time the chief official may order all or any part of the construction or demolition respecting the building ceased, and such order shall be served or posted on the site, and then in accordance with that, the penalty of a breach of either of those, and this is the reason we're before the court, is specified on page 16, paragraph 24 of paragraph 1 (b):

20 "Every person who fails to comply with any order, direction or other requirement made under this Act"...which has been done..."is in contravention... is guilty of an offence and, on conviction, liable to a fine of not more than two thousand". So that's how they all fit, one after and within the other.

25 If I may then, call Mr. Walker.

CLERK OF THE COURT: Come forward, please, sir, to the v-shaped area right here.

Take the Bible in your right hand and state your name, please.

30 DOUGLAS WALKER, SWORN

Walker, in-chief

5 MR. CASEY: If I may first file as exhibit one in these proceedings a certified copy under the signature of the clerk of the municipality of the Borough of East York, and under his corporate seal certifying as to by-law number 11-85, which appoints chief building officials as inspectors under the Building Code Act, under which Douglas Walker's name is set forth?

10 THE COURT: Exhibit one.

Do you wish to see that document, sir?

Just pass it over so he can take a look at it.

THE DEFENDANT: I think I have it. I don't have this one.

(REPORTER'S NOTE: Interpreter reads document to defendant.)

15 THE DEFENDANT: I don't have this document.

THE COURT: I didn't ask you...just if you wanted to see it.

THE DEFENDANT: No, I can see it.

THE COURT: Fine.

20 EXHIBIT NUMBER ONE: At this time the abovementioned document was produced and marked.

THE COURT: Go ahead.

25 EXAMINATION-IN-CHIEF BY MR. CASEY

Q. Mr. Walker, you see the court is using an interpreter. Accordingly, I would ask that you give your evidence in short sentences so that the interpreter may have an opportunity of translating what you say.

30 A. Okay.

Q. Firstly, what is your position with the



Q. (cont'd.) corporation of the Borough of  
East York?

5 A. I'm an inspector of the building code and  
Building Code Act.

Q. That's in accordance with exhibit number one,  
which I just filed with the court?

A. That's correct.

10 Q. You've heard that we are proceeding on three  
charges?

A. Yes.

Q. We'll deal with charge number one.

A. Okay.

15 Q. Which is a contravention of section 6 (5)  
of the Building Code Act.

Firstly, was a building permit issued in respect  
of Mr. Kovari?

A. Yes, it was.

Q. And at what premises?

A. 60 Don Valley Drive.

20 Q. And do you have the plans that were approved  
at the time that the building permit was issued?

A. Yes, I do.

Q. Is this what you have before you?

A. Yes.

25 Q. Are these the original records from the  
Building department of the borough?

A. Yes, they are. They are stamped and signed.

MR. CASEY: Your Worship, I believe we'll have to  
put them in as an exhibit, at the moment, and Mr. Walker can  
make reference to them.

30 THE COURT: Okay. Pass them...what are all these?

MR. CASEY: All the plans and the permits  
involved together. I will have Mr. Walker go through, it's just

MR. CASEY: (cont'd.) that he's going to be making reference...I'm sorry...he's going to be making reference to...

5

THE COURT: Well...

MR. CASEY: ...them and therefore they should be in as an exhibit properly before the court.

THE COURT: But there are also notes here. Maybe you should take a look and see which you wish to have entered so we can ...

10

MR. CASEY: Q. Okay. In respect of these notes and documentation which you have put forward, are they all part of the application and building permit?

15

THE WITNESS: A. Yes. They are comments that were made during application and during the approval stage, and any subsequent changes are also kept on record as part of the permit.

Q. In respect of notes here, then, whose... do you know whose notes they are?

A. I believe that's Sharon Vincent's.

20

Q. Okay. I'm sorry. Okay.

What we will do is only make reference to each part as we go, then, and the rest will be available. That might make it easier.

25

In respect of these premises and the allegation that: fail to construct a building other than in accordance with plans, what part of the plans is it alleged were not complied with?

A. In respect to the new addition - the width and the length...

Q. I'm sorry. I didn't introduce that properly. What is the nature of the building permit?

30

A. The nature of the building permit is to construct an addition to the rear of the house.

Walker, in-chief

Q. At 60 Don Valley Drive?

A. 60 Don Valley Drive.

Q. Approximate dimensions?

A. Eleven feet by 15 feet, six inches.

Q. All right.

THE COURT: Did you intend to have that document entered that he's reading from?

MR. CASEY: Yes.

THE COURT: All right.

INTERPRETER: He said how many feet?

THE WITNESS: Eleven feet by 15 feet, six inches.

THE COURT: Let's see that document...the document he's referring to.

MR. CASEY: Okay. I'm just going to take them one document at a time, then, and that will make it simpler.

THE COURT: That document will be exhibit two.

EXHIBIT NUMBER TWO: The abovementioned document is then produced and marked.

THE COURT: Do you want to show it to him?  
This is exhibit two, sir. Perhaps you would like to take a look at it.

THE DEFENDANT: I can go through.

MR. CASEY: If I may, Your Worship, I'm showing to you the plans that the witness has said have been filed on your application, for an addition to...for an addition to 60 Don Valley Drive.

THE DEFENDANT: Is this the first drawing or the second one, sir?

MR. CASEY: I realize the problem we have here, but I'll just take this back, if I may.

Witness, there has been a question as to whether

Q. (cont'd.) exhibit number two is the first or second drawing. Does that question mean anything to you?

5 THE WITNESS: A. I believe there were some revisions. That appears to be the first, April 25, 1984.

Q. Is there a second?

A. Yes, there is...May 28, 1984.

THE COURT: Okay. So the answer is that's the first one. Okay.

10 Okay, that's the first drawing, sir.

MR. CASEY: Q. Let us now have the second one. Is there any more than two drawings?

THE WITNESS: A. This is not approved, no.

MR. CASEY: This would be number three, I believe.

15 THE COURT: The second drawing, sir...show it to him, please...that would be exhibit three.

EXHIBIT NUMBER THREE: At this time the document abovementioned was produced and marked.

MR. CASEY: This is the second drawing.

20 THE DEFENDANT: Yes, this is...this is the time when we admitted, on the 28th. The date is correct and ...where is the copy?

MR. CASEY: Q. In respect of those drawings, do they now put before the court enough information so you can describe what was supposed to be built and what you found to be built?

THE WITNESS: A. Yes.

Q. Can you then explain that to the court, please?

30 A. Okay. As I had previously mentioned, the dimensions of the new addition, they're on the drawings. I went out to inspect...

THE COURT: Well, which one...if you're referring to exhibit one, it says on the bottom of it: "not built-resubmit revised plan".

5 THE WITNESS: Yes.

THE COURT: So I guess that one means nothing?

THE WITNESS: Well, it's the first one that the charges are based on, because those are the ones I inspected.

THE COURT: Is that the first one?

10 THE WITNESS: The first one submitted is the first set of plans.

THE COURT: And it says, "not built - resubmit revised plans".

MR. CASEY: Q. I might ask, when were the revised plans submitted, before or after the offences?

15 THE WITNESS: A. After. After the offences.

Q. All right. So then we may deal with drawing number one in respect of the offence...offences before the court?

A. Yes.

Q. And what was it, then, in respect to drawing number one that you found to be contrary to the permit?

20 A. The foundation...

THE COURT: When was this again?

MR. CASEY: Q. On what date?

THE WITNESS: A. Okay. It was May 13th...

THE COURT: Of what year?

25 THE WITNESS: 1984.

THE COURT: Okay.

MR. CASEY: Q. And you went to the property?

THE WITNESS: A. Yes, I did.

Q. And?

30 A. I observed there had been some construction, and I noticed that it was one foot wider than on the plans, and approximately nine feet longer than on the plans.

Q. When you say 'it'?

A. The foundation...the addition.

Q. At what stage was the addition? Was it just footings or basements, or were they up above the ground? What stage?

A. They were footings only.

Q. And how did you make that calculation as to measurements?

A. I used my tape measure.

Q. What did you do about that?

A. I issued an order to comply.

Q. Is that charge number two, dated June 8th?

A. Yes, yes.

Q. The part ...proceeding under that one?

A. Yes.

Q. All right. Sorry.

THE COURT: What date did you issue that order?

THE WITNESS: June 11, 1984.

MR. CASEY: Q. Sir, you did an earlier order on June 8th?

THE COURT: Well, I don't know. It looks to me as if he's referring to an information. Either he has an order that he's going to be referring to, or...

MR. CASEY: Yes. Oh, yes, there's an order there.

THE WITNESS: I've got the order here.

Okay. It was written on June 8th, and tendered by registered mail on June 12th.

MR. CASEY: Q. And what was the order?

THE WITNESS: A. It was an order to comply, it was for constructing not in accordance with the approved plans, and I referred to the footings and requested new plans.

Q. Okay. And is there detail...I'm sorry.

MR. CASEY: I'll enter this as exhibit...in this matter.

CLERK OF THE COURT: Four. Is that the order?

MR. CASEY: Four, which is the order to comply. I have a photocopy, if I may.

THE COURT: All right. Exhibit four.

EXHIBIT NUMBER FOUR: The abovementioned document was then produced and marked.

MR. CASEY: Q. And there is a description of the violation?

THE WITNESS: A. Yes, there is.

Q. And would you read that, please?

A. Okay.

"Not construction of step footings...oh, not construction of step footings in accordance with permit drawings", and,

"drawings and permit don't agree with in situ conditions."

Q. I'm sorry, I asked you to read the violation.

A. Oh. I'm sorry.

Q. Entirely.

A. Oh, entirely.

Okay. "Not construction of step footings in accordance with permit drawings. Remove these footings as per new approved drawings, and repour as to new approved drawings", and...

Q. Number two?

A. ...concrete is of questionable quality, and poorly placed, and drawings and permit 6835 don't agree with in situ conditions."

Q. And the section of the Act breached, section 6 (5)?

A. Yes, it is.

Q. And what time was given to comply?

A. Forthwith.

Q. Did you go back after that?

A. Yes.

Q. To the site?

A. Yes, I did.

Q. When you went back what date was it?

A. June 11th, 1984.

Q. And what did you find at that time?

A. I found that there had been minor progress, but the work that had been done in contravention was still there.

Q. The overall size had not been changed?

A. It had not.

Q. What work had progressed from...

THE COURT: Okay, excuse me. Just a minute, before you go any further.

Didn't you say that order that was done on June 8th was mailed on June 11th or 12th?

THE WITNESS: It was posted on the site, and mailed.

THE COURT: Okay, go ahead.

MR. CASEY: Q. And you're into this second attendance, now, on June 11th?

THE WITNESS: A. Yes.

Q. And ...

A. I went back...

Q. ...you have described what was there the first time you went. I want you to describe now what you saw on June 11th.

A. On June 11th there was a further progress: building materials had been moved around on the site, the



5 A. (cont'd.) concrete work had been...additional concrete had been poured, it seemed, and the material in violation had not been removed as requested.

Q. Well, at what stage was it now? The first time was footings only?

A. Mmm-hmm.

Q. What stage are you now?

10 A. A continuation of the footings, they had been increased in size.

Q. Is that width, height, depth?

A. Height. Height.

Q. Height?

A. Yes.

15 Q. By about how much?

A. I would say a foot or so.

Q. Did you take pictures at that time?

A. Yes, I did. On June 12th I took the photographs.

Q. On June 12th, then, you came back?

20 A. Yes.

Q. You took photographs?

A. Mmm-hmm.

Q. You're showing me some here?

A. Yes.

25 Q. Is that done with a Polaroid camera?

A. Yes, it is.

Q. Did you take these pictures yourself?

A. I did.

Q. Were they developed out of the Polaroid camera at the site?

30 A. They were.

Q. Do they conform to what you saw?

A. Yes.

Walker, in-chief

MR. CASEY: All right. The two sets of photographs, they might go in as A and B, or whichever you wish.

THE COURT: Yes, exhibit five and six. The one showing the concrete blocks and on the back it looks like disposable..junk, and that will be exhibit five, and the other one exhibit six.

Perhaps you can show them to the defendant.

EXHIBIT NUMBER FIVE: The abovementioned photographs were then produced and marked.

EXHIBIT NUMBER SIX: The abovementioned photographs were then produced and marked.

MR. CASEY: These are pictures which Mr. Walker says he took on the 12th day of July...the 12th of July?

THE COURT: That's what he said.

MR. CASEY: Yes. What about June? June... pardon me.

THE COURT: June, right. I'm sorry.

MR. CASEY: Q. Now, having seen that and taken the pictures, did you make any further orders?

THE WITNESS: A. Well, the stop work order.

Q. What did you do about a stop work order?

A. I posted the stop work order on the site.

Q. Did you prepare it at the site?

A. No, it was prepared at the office, it had to be signed by the chief building official, and then it was taken to the site.

Q. By whom?

A. By myself. It was posted and I did take a photograph of it posted, in those pictures.

Q. And is this the yellow...is this a true copy of it?

A. Yes, it is.

Q. A carbon copy?

A. Yes.

Q. All right.

THE COURT: Exhibit seven.

EXHIBIT NUMBER SEVEN: The abovementioned document was then produced and marked.

MR. CASEY: Q. In respect of that, if I may, it reads: "Stop all construction until order to comply number 133 is complied with".

And I note the previous yellow sheet filed is marked in the upper righthand corner as number 133, is that correct?

THE WITNESS: A. That is correct.

Q. Now, did you see Mr. Kovari on either of these occasions?

A. No. Not on those two occasions.

Q. Subsequently did you attend at the property?

A. Yes, I have.

Q. And in respect of what is there, does it now comply with, firstly, the original plans as were filed?

A. No, it does not.

Q. You have told the court and have filed as an exhibit a second set of plans. Were those seconds plans approved?

A. Partially.

Q. A part of them are approved?

A. Yes.

Q. Okay. In respect of what is on the ground at the site now, does it comply with the second set of plans?

A. No.

MR. CASEY: I have no further...

THE COURT: Mr. Kovari, do you wish to ask the inspector any questions, sir? Do you wish to ask the inspector any questions?

THE DEFENDANT: No, I don't have.

THE COURT: Thank you.

MR. CASEY: Thank you.

---the witness retired

MR. CASEY: That's all the evidence we have on behalf of the municipality, Your Worship.

THE COURT: All right. Anything you wish to say as to the evidence before me, as to why you feel I should call for a defence?

MR. CASEY: Oh, yes, Your Worship. We have put before you in evidence the requirements of section 6 (5), that the plans...or the construction is not in compliance with the plans as filed. That's the evidence of the inspector, who is qualified in that regard and appointed under the Act, number one, and number two, he further states that on the first exhibit...I'm sorry, on subsequent attendance he issued a stop work order which was not complied with, and then he issued under...I'm sorry, not a stop work order, an order to perform work forthwith complying with plans, not complied with, and at that point, on his second attendance, he submitted a final order, being a stop work order to stop all building.

THE COURT: Is that it?

MR. CASEY: That's it.

THE COURT: Thank you.

Well, I'm not satisfied on the evidence that there was a case made out against the defendant charged on the informations, on each of the three informations. I have a stop work...

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MR. CASEY: Well, if I may, I might go one step further then.

THE COURT: Go ahead.

MR. CASEY: The only thing that I may have in mind is the matter of ownership of the property. I can certainly submit to you, I'm prepared to do so right now, a certified copy of the assessment roll which shows these premises and the lot and plan number in respect thereof...

THE COURT: Well, sir, I gave you full and ample opportunity to prove your case and to do whatever you wish. I started rendering judgement and at that time you interjected.

MR. CASEY: Absolutely right.

THE COURT: Right. What I'm saying is, that there was no evidence that this gentleman is the owner of the building. It's alleged on the stop work order and the order that ...order to comply with...that he is the owner, but there is no evidence he is the owner, other than what's stated on there. But there is no evidence that he in fact had anything to do with any of the building or constructing of the premises whereby the inspector could make any orders under a Building Code Act.

That evidence isn't before me and it wasn't before me, and the charges against the defendant are dismissed.

MR. CASEY: The defendant's name is not shown on the plans, Your Worship, that are exhibits?

THE COURT: Just because the name is on it doesn't mean...I don't know anything about the name on the plans. What I'm saying is there was no evidence before the court to support the charges.

\* \* \*

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPTION OF MY RECORDINGS, TO THE BEST OF MY SKILL AND ABILITY.

  
JOAN BAILEY  
Court Reporter

