

The Edmonton Journal

50 CENTS

SATURDAY, MARCH 24, 1984

'Convenient' jailings criticized by lawyer

By KATHERINE DEDYNA
Journal Staff Writer

Accused persons are sometimes jailed for the administrative convenience of provincial courts, and the practice should be addressed by a higher court, a city defence lawyer said Friday.

David Midanik told Court of Queen's Bench Justice D.C. McDonald that his client, Denis Germaine, was held in custody for five days in Lac la Biche, basically because he couldn't hire a lawyer.

Germaine was jailed from Sept. 12 to 16 by provincial court Judge Lucien Maynard — against the objections of even the Crown prosecutor. The judge was critical of Germaine's four appearances in court on assault charges, saying his lack of a lawyer constituted contempt of court.

When he jailed Germaine, Maynard said: "I'm going to adjourn your case for one week to give you one final opportunity to get a lawyer and I'll keep you in custody to make sure you get a lawyer," a court transcript shows. "I consider what he has been doing is contempt of the judicial process, and I will not stand for it."

Such jailings are not isolated cases, said Midanik, who also cited a similar overnight jailing by an Edmonton provincial court judge last month.

"An accused person has rights that cannot be (denied) even if the court's time is wasted," said Midanik, who argued that under the Charter of Rights and Freedoms, the accused's rights have been circumvented.

Midanik asked McDonald to dismiss four assault charges against Germaine — one of them an aggravated assault charge in which another man was blinded in one eye.

However, Crown Prosecutor Peter Kierluk, who had argued in Lac la Biche against the jailing of Germaine, opposed the dismissal of the charges.

Lac la Biche is "the assault capital of Alberta," he said, and the justice system would be brought into disrepute if people charged with serious assaults are let go.

But Midanik argued that if McDonald granted his application, similar jailings would "not happen again for a long time."

McDonald reserved his judgment, but suggested compensation may be an alternative to dismissal of charges. He stressed repeatedly that he was not criticizing provincial court judges, but noted this matter was "quite properly brought before the court."

Midanik said Maynard "was not acting judicially if he did make a finding of contempt."

Both Crown and defence lawyers at the time believed Maynard "had no right to make this order," court was told.

Midanik said Germaine had not been warned he might be jailed for contempt. In his arguments before McDonald, Midanik relied on a section of the Charter that prohibits arbitrary detention and imprisonment, and another which upholds the security of the person.

Kierluk said a warrant for Germaine said the man was remanded in custody to get a lawyer.