

# Roach found guilty of assault

BY MURRAY MOORE

At the end of his assault trial, Al Roach said he was surprised that he was found guilty of assaulting former alderman Patrick Kearns. Kearns said he has been vindicated. Provincial Court Judge Gary Palmer fined Roach \$350 last Friday, as punishment for knocking Kearns from his chair during a council meeting.

Kearns read a prepared statement after the end of the trial in Barrie. "A provincial criminal court has found Al Roach guilty of assaulting me. I have been vindicated in charging Al Roach, who has abused his high office. It is unacceptable behaviour for a

Midland mayor to silence political dissent by committing assault."

Roach said that he is "leaning" toward instructing his lawyer to apply for an appeal. The mayor repeated a statement that he has made before in connection with the trial: he is "man enough" to accept the judge's finding.

Roach said he regretted that Judge Palmer did not hear details of events of the three years before Nov. 12, 1984, the date of the assault.

Roach appeared to be referring to the stormy relations between himself and a number of other Midland council members of that

period, council members including Kearns, then an alderman for Ward 1.

Roach's lawyer, Peter Mudry, in his summation to the judge on Friday, included mention that his client, in the three years before the assault, underwent a great deal of adversity, experienced a lack of co-operation and insolence, and undeserved harassment. The re-election of Roach as mayor of the town last November suggested that the mayor's opinion was supported, Mudry said.

During his sentencing, Judge Palmer took into account Roach's lack of a criminal record and his service to his community. He found that Roach struck Kearns with sufficient force to knock him from a seated position on to the floor of the Midland council chamber, and bloodying his nose. As a politician and as a mayor, Roach has a high public profile, and is a man of great privilege, Judge Palmer told Roach. "You have sadly abused that privilege, especially in the context of a municipal meeting".

The last day of the trial saw reporters Paul Welch and Mark Bourrie, and Midland Police Chief, Ernie Bates and Sergeant Jack Charlebois, take the stand, as well as Kearns.

Before the first witness was called, Judge Palmer ruled on whether he would permit the trial to follow the line proposed by the defense, that the complainant in the case, Kearns, might be abusing the process.

Roach's defence was founded on trying to prove that Kearns used the threat of a court case against Roach as a lever to make

him resign. The defence argument followed the line that Kearns used newspaper stories and conversation with two town police officers to send the message to Roach. That message, the defence claimed, was that Kearns would not charge Roach if the mayor resigned.

Kearns for his part on Friday testified that a story which appeared in the Globe and Mail was the stimulus which led him to charge Roach with assault. Roach was quoted in the newspaper story as saying that, although he had sent Kearns an apology, the apology was not worth the paper on which it was written. Roach also told the reporter he would repeat his action.

Testimony from all witnesses to the assault indicated that Roach, without warning, struck Kearns, during a closed council meeting, late in the evening of Nov. 12.

Early in the morning of Nov. 16, Kearns testified last Friday, he read Roach's statements in the Globe and Mail. He proceeded to the town police department and made a complaint. While in the police station, Kearns testified he said, "If Al Roach had only resigned and shown some remorse, I wouldn't be here this morning."

Later that morning Kearns was advised by town police that the Crown Attorney had decided that

police would not be laying a charge against Roach. The following Monday, Kearns laid a charge privately, through an Elmvale justice of the peace.

Judge Palmer found that extortion was not a factor in the case, because the defence was unable to prove that extortion had been attempted. The "fatal flaw" in the defence's case was its inability to prove that the alleged extortion threat was conveyed to the "supposed" victim.

Judge Palmer responded to the defence's assertion that the fact of an extortion attempt was the clearest of cases. The judge found that the evidence was not even close to the clearest of cases. "It is the foggiest of cases."

Judge Palmer concluded that Kearns felt that he had been wronged, and that something should be done. He found no evidence to support that Kearns ever

contacted Roach, or sought members of the news media to manipulate them to send Roach the alleged extortion message. He believed evidence that Kearns was uncomfortable about going to the police on Nov. 16, and that Kearns that morning "did not have the bearing of a man bent on the destruction of Al Roach's political career."

Kearns telling reporters that he thought Roach should resign, was no more than an example of a citizen exercising his right to express his opinion, Judge Palmer said.

As part of his summation, Mudry called Kearns nobody's fool, who knew Roach would hear one way or another that Kearns would not press a charge if Roach resigned. Mudry described Kearns' tactic as an "attempted extortion of this intangible." The intangible Mudry meant was the position of mayor.

## Seventeen months to settle charge

The trial on a charge of assault of Midland Mayor Al Roach ended last Friday, 17 months after the mayor knocked former alderman Patrick Kearns from his chair during a Town council meeting.

The lawyer for the complainant, Bob McKinnon, noted during his summation the case appeared on a court docket eight times, and that the trial was extended over six dates. He complained of "stonewalling" by the other side.

Peter Mudry, Roach's lawyer, responded that the number of court dates was not his client's fault.

The two court dates previous to last Friday's were abbreviated. Until last Friday, the trial was held in Midland. Arguments presented to Judge Gary

Palmer last December, and last January, were sufficiently complicated, in the opinion of Judge Palmer, that he felt he had no choice but to adjourn early each day.

The judge explained that he needed access to a law library. Provincial Court in Midland is held in the rented council chambers. A law library is not included. In January the judge advised that the trial would move to Barrie.

The trial did not begin on the first scheduled trial date because the court ran out of time. On the next scheduled trial date, the trial did not begin because the mayor was in hospital. The result was that the trial did not begin until about a year after the assault.



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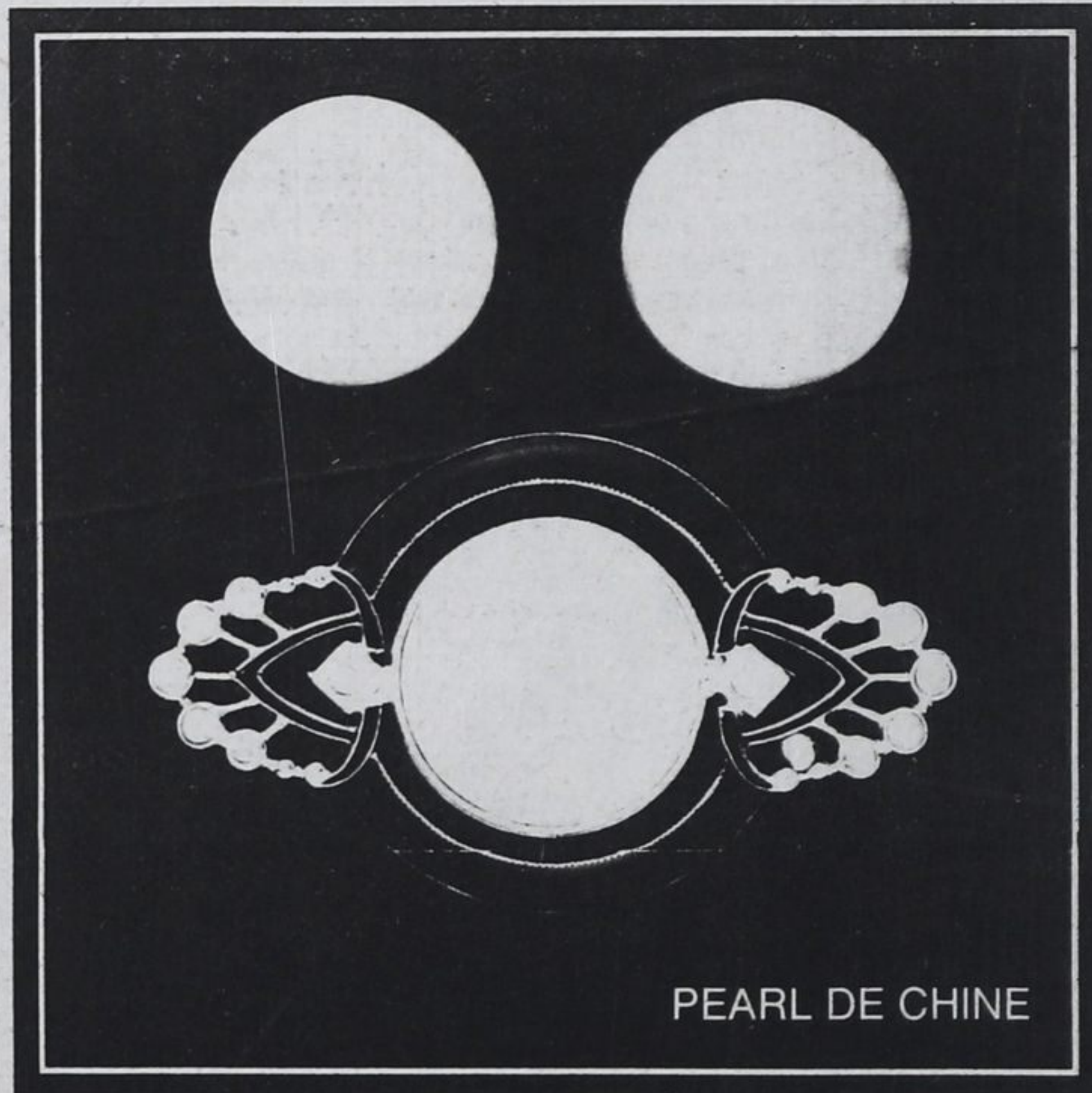
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